

11. EXECUTIVE SESSION
12. DIRECTORS' CALENDAR
Next meeting – August 16, 2018.
13. ADJOURNMENT

BUTTE COUNTY AFFORDABLE HOUSING DEVELOPMENT CORPORATION

RESOLUTION NO. 18-3C

MEMORANDUM OF UNDERSTANDING WITH PACIFIC WEST COMMUNITIES AND HOUSING AUTHORITY OF THE COUNTY OF BUTTE FOR DEVELOPMENT AND OPERATION OF SUNRISE VILLAGE SENIOR APARTMENTS, GRIDLEY

WHEREAS, the Butte County Affordable Housing Development Corporation (BCAHDC), in response to need, seeks to increase the availability of affordable housing in the communities and jurisdiction it serves; and

WHEREAS, Pacific West Communities (PWC) has approached the Housing Authority of the County of Butte (HACB) and the Butte County Affordable Housing Development Corporation (BCAHDC) to participate in development of thirty-seven (37) units of affordable low-income senior housing in Gridley, CA, such development called Sunrise Village Apartments, to be located at 1464 Highway 99, Gridley, CA (Project); and

WHEREAS, such development is proposed to be financed using federal low income housing tax credits, State of California-administered Community Development Block Grant funds, a City of Gridley Impact Fee loan, an HACB loan in the amount of \$350,000, and a BCAHDC loan in the amount of \$250,000; and

WHEREAS, at its regular Meeting of the Board of Commissioners held on March 16, 2017, the HACB Board of Commissioners authorized negotiation with PWC a Memorandum of Agreement (MOA) to address terms of HACB's loan to the Project and participation by BCAHDC, as Managing General Partner in the Limited Partnership (Partnership) that will own and operate the Project, in materially participating in the development and operation of the Property; and

WHEREAS, an MOA has been drafted which substantially identifies the roles of the parties to the MOA; and,

WHEREAS, time is of the essence in proceeding with development of the Project; and

WHEREAS, the MOA as drafted has been determined to be sufficient for purposes of identifying roles and advancing project interests until such time as the formal Partnership Agreement is determined, based on the best interests of the HACB, BCAHDC, and PWC;

THEREFORE BE IT RESOLVED by the Board of Directors of the Butte County Affordable Housing Development Corporation (BCAHDC) to authorize its President to execute the Memorandum of Agreement (MOA) between BCAHDC, the Housing Authority of the County of Butte (HACB), and Pacific West Communities (PWC) for purposes of participation in the affordable housing development project known as Sunrise Village Apartments, to be located at 1464 Highway 99, Gridley, CA, provided such negotiation not substantively change the terms of the MOA, attached to and made a part of this resolution.

Dated: June 21, 2018.

Edward S. Mayer President

ATTEST:

Marysol Perez, Secretary

MEMORANDUM OF AGREEMENT

THIS AGREEMENT is entered into this 21st day of June, 2018 by and between ***Pacific West Communities, Inc.***, an Idaho corporation (hereafter “PWC”), ***Housing Authority of the County of Butte***, a public body corporate and politic (hereafter “HACB”), and its affiliate ***Butte County Affordable Housing Development Corporation***, a California nonprofit public benefit corporation (hereafter “BCAHDC”).

RECITALS

WHEREAS, PWC and its affiliates have the experience and expertise necessary to prepare Tax Credit applications, prepare architectural designs and plans, obtain construction and permanent financing, construct the Project, and syndicate tax credits; and

WHEREAS, PWC, or related party, has secured site control of an approximately 1.98 acre property located at 1464 Highway 99, Gridley, CA, and desires to develop approximately 37 units of senior affordable housing on the site (“Project”) as described in the attached Exhibit A; and

WHEREAS, PWC has secured a loan from the City of Gridley, sourced from State of California CDBG funds, in the approximate amount of \$450,000, such loan proceeds to be used for qualifying Project expenses; and

WHEREAS, PWC has secured an Impact Fee loan from the City of Gridley, in the amount of 25% of the City-assessed Impact Fees, in the approximate amount of \$175,000, such loan proceeds to be used for qualifying Project expenses; and

WHEREAS, HACB and its affiliate BCAHDC provide affordable housing opportunity to households in Butte County, including the City of Gridley; and

WHEREAS, PWC has approached HACB for a loan to the LIHTC Partnership that would develop, own and operate such affordable senior housing development in Gridley, and

WHEREAS, PWC has approached BCAHDC to seek BCAHDC’s participation as non-profit Managing General Partner in the LIHTC Partnership that would develop, own and operate such affordable senior housing development in Gridley; and

WHEREAS, HACB and BCAHDC have determined it in the best interest of the HACB, the BCAHDC, their clients, and the community they serve to work with PWC in seeking to create affordable housing opportunity through construction of new residential units meeting the needs of low-income seniors in Gridley;

IT IS, THEREFORE, AGREED AS FOLLOWS:

1. PWC shall seek financing for the Project suitable to HACB and BCAHDC. PWC shall also use its best possible efforts to obtain a commitment to purchase tax credits at the best possible terms. PWC shall also perform any and all procedures and pay all expenses necessary to

syndicate said tax credits. This agreement is conditional upon securing an allocation of low-income housing tax credits that PWC deems sufficient for financing of the Project.

2. PWC, HACB, and BCAHDC shall work jointly to prepare and submit any financing applications required for the development of the Project. HACB and BCAHDC shall be given an opportunity to review any tax credit or other financing applications submitted for the Project. PWC shall advance any and all predevelopment funds required for the applications and will also pay any other costs incurred prior to the start of construction.
3. Providing financing sufficient for development of the Project is awarded, PWC, HACB, and BCAHDC shall work jointly together to obtain all federal, state and local approvals necessary to develop the Project, and shall further execute any and all documents and/or agreements, subject to appropriate review, as may be necessary to move the Project forward.
4. PWC shall work with DG Group Architecture, LLC dba Pacific West Architecture to provide all the necessary design work and building plans subject to mutual approval by PWC, HACB, and BCAHDC. PWC's affiliate, Pacific West Builders, Inc., being a licensed general contractor in the State of California, shall construct the Project.
5. At the initial closing of the construction loan, PWC, HACB, and BCAHDC shall be reimbursed from funding proceeds all project development expenses previously paid relating to the Project. BCAHDC shall also be entitled to a fee of \$10,000 that will represent payment for overhead expenses incurred. For its services pertaining to the development and design of the Project, BCAHDC shall be paid a fee equal to 20% of the developer fee for the Project. PWC shall be paid a fee equal to 80% of the developer fee for the Project. If total financing sources are not sufficient to pay all or a portion of the developer fee earned, proceeds from cash flow shall be used until the entire fee is paid in full. Payments of any developer fees shall follow closing of the permanent loan and final tax credit syndication payments from the investor, unless sufficient financing proceeds are available at an earlier date at which time a partial payment may be made. All cost overruns shall be borne by PWC, after full deferral of the developer fee. BCAHDC shall be entitled to reimbursement of up to \$15,000 in legal fees at construction loan closing.
6. HACB shall provide a capital funds loan in the amount of \$350,000 ("HA Loan") to facilitate the development of the Project. HA Loan terms will include a simple interest rate not to exceed 3% with a 55 year term and be secured by a promissory note and deed of trust. Payments on the HA Loan will be a participation in 50% of Residual Receipts, as that term is defined in Exhibit "B" hereto, pro rata with all other soft financing of the Project.
7. BCAHDC shall provide a capital funds loan in the amount of \$250,000 ("NP Loan") to facilitate the development of the Project. NP Loan terms will include a simple interest rate not to exceed 3% with a 55 year term and be secured by a promissory note and deed of trust. Payments on the NP Loan will be a participation in 50% of Residual Receipts, as that term is defined in Exhibit "B" hereto, pro rata with all other soft financing of the Project. NP Loan shall be made only after BCAHDC has been paid their portion of the developer fee for the Project, which is currently projected to be \$270,000.
8. HACB's membership in the California Affordable Housing Agency (CalAHA) joint powers authority provides for access to tax-exempt bond financing in support of the project;

9. The HACB can monitor labor wage rates, if applicable to the project.
10. Upon completion of construction and passing of all inspections, the limited partnership established by an affiliate of PWC and BCAHDC during the predevelopment period, along with the investor limited partner under an amended and restated partnership agreement, shall thereafter own and operate the Project as an affordable housing project subject to the requirements set forth by the tax credit program and other financing agreements. All cash flow and ownership benefits, including the sale of the property shall be shared 80% to the general partner affiliate of PWC and 20% to BCAHDC. The Managing General Partner of the Project shall also receive an annual fee of \$3,700 (\$100 per unit) after stabilization to the extent the Managing General Partner has and continues to take care of the customary Manager General Partner duties.
11. Managing General Partner – BCAHDC will serve as a Managing General Partner to the Limited Partnership, to be formed, that will own and operate the Project. Upon admittance, BCAHDC shall have all rights and obligations of a Managing General Partner under California law. Notwithstanding, the assignment, delegation or reservation of any duty or obligation under the Partnership or the Property Management Agreement, BCAHDC shall at all times be considered to be continuously and substantially involved in the management and operation of the Partnership and the Project. BCAHDC shall:
 - a) Advise the Partnership concerning particular requirements of low income housing rules and regulations and monitor compliance with all government regulations and file or supervise the filing of all required documents with government agencies.
 - b) Facilitate development and operation of the Project by appearance or correspondence with lenders and government bodies.
 - c) In conjunction with the Administrative General Partner execute and deliver all partnership documents on behalf of the Partnership.
 - d) Participate in hiring and overseeing the work of all persons necessary to provide services for the management and operation of the Partnership business.
 - e) Ensure Supportive Services are coordinated and delivered by BCAHDC or others as “delegated” to pursuant to BOE Rule 140.1;
 - f) BCAHDC shall use its best efforts to obtain and maintain the “Welfare Tax Exemption” available to qualified low-income projects through California State Revenue & Taxation Code §§ 214(g), et seq. and related State Board of Equalization (BOE) administrative rules and rules of procedure.
 - g) BCAHDC shall also have any and all necessary authority to ensure compliance with BOE’s rulings and policies, as well as federal and state tax statutes and court rulings relating directly to the above mentioned obligations.
12. PWC shall select a third party management company, with the approval of BCAHDC, to manage the project in accordance with commercially reasonable terms and in compliance with IRC Section 42 guidelines. HACB may elect to provide certain management operations such as maintenance and landscaping, also on commercially reasonable terms.
13. In the event that the partnership elects to sell the project, BCAHDC shall have, after 15 years from the project’s placed-in-service date, the right of first refusal to purchase the project at its fair market value. Said right shall not terminate unless BCAHDC elects to do so in writing. If

BCAHDC elects to sell the project, BCAHDC will receive 20% of the proceeds and benefits from that sale and PWC (or affiliate) will receive the remainder.

14. PWC, HACB, and BCAHDC shall at all times ensure that the Project is consistent with federal and state laws that govern HACB, and its affiliate, as a 501(c)(3) non-profit corporation.
15. PWC, HACB, or BCAHDC may terminate this Agreement without liability upon written notice to the other party if either party determines, in its sole discretion, that (i) the Project or the partnership is infeasible or is not in such party's best interests or (ii) that sufficient financing to develop the Project will not be awarded by December 31, 2020. In the event the Project becomes infeasible and does not close, all predevelopment costs of the Project incurred by PWC shall be the responsibility of PWC, except those costs described above incurred by BCAHDC prior to admittance of BCAHDC to the Partnership.
16. The HACB and BCAHDC shall not be responsible for project "guaranties" or indemnities" to the tax credit investor, lenders and any other financial participant to the Project financing. PWC shall also indemnify BCAHDC for its role and participating in the Partnership. PWC, for itself, its subsidiaries, and affiliates agrees that HACB and BCAHDC's liability for failure to perform any duty or obligation under this MOA, the Partnership or any financing or security agreement entered into by the Partnership shall be limited to BCAHDC's interest in the Partnership.
17. The Parties realize that although it is the sincere desire of each of them for the proposed Project to come completely to fruition, that there is always a degree of risk in pre-development activities and that the Parties each acknowledge that there may be certain circumstances, the occurrence of which may result in the decision that the best course of action is to terminate this Memorandum of Agreement. Such circumstances might include the inability of the project to secure sufficient funds, LIHTC's, or bond cap authority; the inability of the project despite the best efforts of the Parties to obtain other necessary portions of the project's financing package (such as loans, or other city funding) or other causes which are not within the control of the parties to this agreement.
18. In the event such a termination is necessary for any reason by either Party, PWC, HACB and BCAHDC hereto agree that each of them shall indemnify and hold harmless each of the other parties from any and all claims, causes of action or alleged injuries other than those caused by the gross negligence of one of the parties.
19. The Parties agree and understand that in all other respects each of them shall move forward and negotiate in good faith all issues necessary to plan the structure and financing of the above-mentioned affordable housing apartment complex.
20. Formal notices, demands, and communications among the Parties shall not be deemed given unless dispatched by certified mail, return receipt requested, by facsimile delivery with correct answerback received, by electronic mail or by reputable delivery service with a delivery receipt, to the Parties' principal offices as follows:

HACB: Housing Authority of the County of Butte
2039 Forest Avenue
Chico, CA 95928
Attention: Edward S. Mayer, Executive Director
Telephone: 530-895-4474 x 215
Fax: (530) 895-4459
Email: edm@butte-housing.com

BCAHDC: Butte County Affordable Housing Development Corporation
2039 Forest Avenue
Chico, CA 95928
Attention: Edward S. Mayer, President
Telephone: 530-895-4474 x 215
Fax: (530) 895-4459
Email: edm@butte-housing.com

PWC: Pacific West Communities, Inc.
430 East State St., Suite 100
Eagle, ID 83616
Attention: Caleb Roope
Telephone: 208-461-0022
Fax: 208-461-3267
Email: calebr@tpchousing.com

IN WITNESS WHEREOF, the parties hereto executed this Agreement as of the date first written above.

Housing Authority of the County of Butte

By: Edward S. Mayer
Its: Executive Director

Pacific West Communities, Inc.

By: Caleb Roope
Its: President

Butte County Affordable Housing Development Corporation

By: Edward S. Mayer
Its: President

Exhibit A

Sunrise Village Senior Apartments, Gridley, Butte County, California

Location

The site for the proposed project, Sunrise Village Senior Apartments, is situated at 1464 Highway 99 in the City of Gridley, Butte County. The site consists of a 1.98 +/- acre parcel on which 1 residential building and 1 community building will be constructed.

Housing Type

The proposed development will be a 37-unit rental new construction project. With a mix of 31 one-bedroom units (approximately 613 sq. ft.) and 6 two-bedroom units (approximately 805 sq. ft.), Sunrise Village Senior Apartments will provide affordable housing for seniors earning up to 60% of the area median income (AMI) for Butte County.

Construction Design & Project Description

The units will be newly constructed garden style apartments. The type of construction will be wood frame supported by perimeter foundations with concrete slab flooring. This type of construction will allow the building to conform to the natural terrain with only minor amounts of grading. The exterior will be a combination of vinyl lap and shake siding with Class A composite roof shingles and stone veneer accents. Decks and stairs will feature open railings. Minimum construction standards will be adhered to in order to assure that a quality senior housing development is provided.

The buildings will be oriented appropriately throughout the site with the intent to create a community concept. For the benefit and welfare of its residents, the project will include a 1,555 square foot community building consisting of an office, maintenance room, computer learning center, laundry facilities, exercise room and a resident lounge with a kitchen. An on-site resident manager will provide assistance and management while residing in a two-bedroom manager's unit. The development includes open space as the local code requires and provides a community garden, fenced dog park and a covered picnic area with tables. Covered Parking will also be a convenient amenity the project provides to its residents.

The unit mix will be as follows:

Number of Units	Bedrooms	Unit Size	AMI
31	1	613 sq. ft. (approximate)	30%, 50%, 55%, 60%
5	2	805 sq. ft. (approximate)	30%, 50%, 55%, 60%
1 (Manager's Unit)	2	805 sq. ft. (approximate)	

Within the units, residents will enjoy standard features such as energy efficient refrigerators, exhaust fans, dishwashers, disposals, and ranges with ovens. All units will include washers and

dryers as well as feature a covered patio or balcony. The design of these apartments will adhere to all necessary requirements to satisfy Section 504 as well as any additional mandates that the local jurisdiction deems appropriate.

Unit Amenities

All units will feature:

- Refrigerators
- Exhaust fans
- Dishwashers
- Garbage disposals
- Ranges with ovens
- Covered patio or balcony
- Washer/Dryer

Project Amenities

- Approximately 1,555 sq. ft. community building
- Resident lounge including TV, seating and kitchen
- Computer room
- Exercise room
- Community laundry room
- Fenced Dog Park
- Community Garden
- Covered parking

Development Schedule

The anticipated construction phase will be approximately twelve (12) months.

EXHIBIT B

PROPOSED LOAN TERMS (2)

June 21, 2018

AFFORDABLE SENIOR RENTAL HOUSING – SUNRISE VILLAGE SENIOR APARTMENTS CITY OF GRIDLEY

1. **BORROWER:** The Borrower will be Gridley Senior Associates, a California Limited Partnership, the managing partner or general partner of which shall be Butte County Affordable Housing Development Corporation. The Loans (2) may be assigned only to meet Project financing requirements and/or the Borrower’s limited partnership agreement.

2. **PROPERTY; PROJECT:** The Loans (2) shall be made in connection with the development of the Sunrise Village Senior Apartments to be constructed on property located at 1464 Highway 99, Gridley, CA (“Property”).

The proposed project will consist of 36 affordable senior housing rental units targeting very low and low income seniors and 1 market rate manager’s unit (“Project”).

3. **LOAN AMOUNT:**

The Housing Authority of the County of Butte (“Lender”) will provide a loan to Borrower in the amount of \$350,000 (“Housing Authority Loan”).

Butte County Affordable Housing Development Corporation (NP Lender) will provide a loan to Borrower in the amount of \$250,000 (NP Loan)

4. **INTEREST RATE:** The outstanding principal balance of the Loans shall bear no interest (0%) from disbursement through and including the construction loan closing until the earlier of (i) the permanent loan conversion or (ii) the third (3rd) anniversary of the Project’s construction loan closing; thereafter, the outstanding principal balance of the Loans shall bear interest at a simple rate not to exceed three percent (3%) per year, with the Executive Director and President of the Lenders authorized to set the rate, prior to the construction loan closing, from 0% to 3%, as reasonably necessary to make the Project financially feasible.

5. **MATURITY DATE:** The Loans shall mature fifty-five (55) years from the date the Certificate of Occupancy or its equivalent is issued by the City of Gridley; provided, however that the Loans are due and payable upon refinancing of the Project upon the expiration of the tax credit loan.

6. **USES OF LOAN PROCEEDS:** The Loan proceeds will used to finance a portion of the predevelopment, development, and construction costs of the Project. Construction costs will include the cost of all fees necessary for the issuance of building permits, notwithstanding the fact that the Loan proceeds shall be disbursed so that the building permits can be issued prior to the Project’s construction loan closing.

7. **REPAYMENT LIMITED TO RESIDUAL RECEIPTS:** Annual installments to repay the Housing Authority Loan are limited to a portion of 50% of Residual Receipts generated by the

Project. Lenders' Share of the Residual Receipts will be used to repay the Loans on a prorata basis based on the respective loan amount.

8. SECURITY: The Loans will be secured by a Deed of Trust naming the Lender and NP Lender as the beneficiary, respectively. In the event any Loan proceeds are disbursed prior to the recording of the Deed of Trust, the Loan(s) shall be secured by an Assignment of Agreements, Plans and Specifications.

9. NONRECOURSE: Repayment of principal and interest will be nonrecourse to the Borrower and its partners; recourse shall be limited to the property and any other security (such as the plans, specifications and other Project-related documents) given by Borrower. The loan documents will include the standard nonrecourse provision.

10. SUBORDINATION: Lender and NP Lender will agree to subordinate Deed of Trust and Regulatory Agreement shall be subordinate to all construction lender and Tax Credit lender permanent deeds of trust and senior loan regulatory agreements. The Lender and NP Lender will agree to enter into an inter-creditor agreement with any other subordinate lenders to ensure parity of distribution of Residual Receipts.

11. DEFINITIONS:

"Residual Receipts" in a particular calendar year shall mean the amount by which Gross Revenue (as defined below) exceeds Annual Operating Expenses (as defined below).

"Annual Operating Expenses" with respect to a particular calendar year shall mean the following costs reasonably and actually incurred for operation and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: property taxes and assessments imposed on the Project; debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on loans associated with development of the Project; property management fees and reimbursements, not to exceed fees and reimbursements which are standard in the industry; premiums for property damage and liability insurance; utility services not paid for directly by tenants, including water, sewer, and trash collection; maintenance and repair of the Project; any annual license or certificate of occupancy fees required for operation of the Project; security services; advertising and marketing; cash deposited into reserves for capital replacements of the Project in an amount not to exceed the amount required by any financing and/or tax credit syndication for the Project; cash deposited into an operating reserve in an amount not to exceed the amount required by any financing and/or tax credit syndication for the Project; extraordinary operating costs; an asset management fee and/or partnership management fee; annual payments toward Deferred Developer Fees and condemnation awards for a taking of part or all of the Development for a temporary period; payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, capital improvements reasonably necessary to carry on business and meet the needs of residents of the development and other ordinary and reasonable operating expenses and not listed above. Annual Operating Expenses shall not include the following: depreciation, amortization, depletion or other non-cash expenses or any amount expended from a reserve account.

"Gross Revenue," with respect to a particular calendar year, shall mean all revenue, income, receipts, and other consideration actually received from operation and leasing of the Project. "Gross Revenue" shall include, but not be limited to: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements resulting in actual income; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Project (or applied toward the cost of recovering such proceeds)."Gross Revenue" shall also include the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Development. "Gross Revenue" shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances