

## **RESOLUTION NO. 2012-112**

Adopted by the Sacramento City Council

May 8, 2012

### **TOWNSHIP 9 AFFORDABLE HOUSING PROJECT: AUTHORIZING A \$1,800,000 LOAN COMMITMENT 9(CITY HOME INVESTMENT PARTNERSHIP FUNDS); EXECUTION OF COMMITMENT AND RELATED DOCUMENTS WITH TOWNSHIP 9 AFFORDABLE HOUSING ASSOCIATES, LLC OR RELATED ENTITY; RELATED BUDGET AMENDMENT**

#### **BACKGROUND**

- A. Township 9 Affordable Housing Associates, LLC (Developer) has applied for an allocation of One Million Eight Hundred Thousand Dollars (\$1,800,000) in City Home Investment Partnership Program Funds (HOME) to assist in funding the construction and permanent financing of the 180-unit Township 9 Affordable Housing Project.
- B. The Township 9 Affordable Housing Project qualifies for HOME funding under the Sacramento Housing and Redevelopment Agency guidelines.
- C. The Township 9 Planned Unit Development (PUD) and related land use entitlements including a Large Lot Tentative Map, a Development Agreement, and comprehensive PUD/Design Guidelines were approved by the City of Sacramento on August 28, 2007. An Environmental Impact Report was certified on that date. The appeal period expired on September 28, 2007, and no appeals were filed. There have been no intervening actions or changes in circumstances that would change the environmental impacts of this Project.
- D. In accordance with the requirements of 24 CFR Part 58 Subpart E, implementing the National Environmental Policy Act (NEPA), environmental review for the Township 9 Affordable Housing Project is currently underway, and will be completed prior to any choice-limiting action.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. All of the evidence having been duly considered, the findings, including the environmental findings, as stated above, are approved.
- Section 2. The Loan Commitment, attached as (Exhibit A), for financing the Project with \$1,800,000 in City HOME funds (up to \$4,800,000 in total including \$3,000,000 in Housing Authority as Successor Housing Agency Tax Increment housing set aside funds) is approved, and the Sacramento Housing and Redevelopment Agency (Agency) is delegated authority to administer the loan is authorized to execute and transmit the Loan Commitment to the Developer.

Section 3. The Agency is authorized to enter into and execute other documents, as approved to form by Agency Counsel, and perform other actions necessary to fulfill the intent of the Loan Commitment that accompanies this resolution, in accordance with its terms, and to ensure proper repayment of the Agency funds including without limitation, subordination, extensions, and restructuring of such a loan consistent with Agency adopted policy and with this resolution.

Section 4. The Agency is authorized to amend the Agency budget and allocate up to \$1,800,000 in City HOME funds to the Township 9 Affordable Housing Project.

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Exhibit –A- Commitment Letter

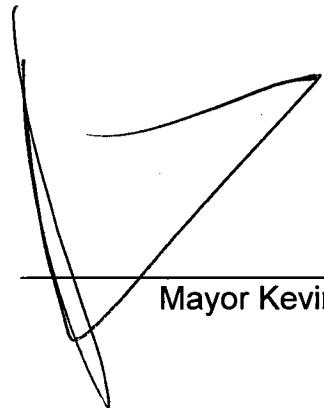
Adopted by the City of Sacramento City Council on May 8, 2012 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



\_\_\_\_\_  
Mayor Kevin Johnson

Attest:

  
\_\_\_\_\_  
Shirley Concolino, City Clerk

Date: May 8, 2012

Michael Johnson and Jack Gardner  
Township Nine Affordable Housing Associates, LLC  
1320 Fillmore Street  
San Francisco, CA 94115

RE: Conditional funding commitment, Township 9 Affordable Housing Project

Dear Mr. Johnson and Mr. Gardner:

On behalf of the Sacramento Housing and Redevelopment Agency ("Agency"), we are pleased to advise you of its commitment of construction and permanent loan funds ("Loan") from the City HOME funds, Merged Downtown Low/Moderate Project Area Tax Increment funds for the purpose of financing the of that certain real property known as Parcel 11 of the Township 9 Development, Sacramento, California ("Property"). Agency's decision is based on your application, and all representations and information supplied by you to it. If these representations and information change in a material manner without written approval of Agency, this commitment is void. Agency's obligation to make the Loan is subject to satisfaction of all the following terms and conditions and Borrower's execution of documentation that is in a form and in substance satisfactory to the Agency.

The Loan shall be made on standard Agency loan documents. No loan terms not in this funding commitment shall be included in the final loan documents without additional environmental review and governing board approval. In the event of any discrepancies between terms stated in this commitment and the loan documents, the terms stated in the loan commitment letter shall be deemed to be terms of this commitment.

Unless otherwise agreed in writing by the Agency in exercise of its absolute discretion, the following shall be considered conditions to Agency approval of a financing commitment. The Agency may, in exercise of its absolute discretion, modify its requirements upon written notice to Borrower given at least sixty days prior to close of escrow for the Property.

This commitment will expire December 31, 2012.

1. PROJECT DESCRIPTION: The project is new construction of a four story, mixed use, 180 unit affordable multifamily housing project.
2. BORROWER: The name of the Borrower for the Loan is T9 Affordable Housing Partners, LP or related entity.
3. PURPOSE OF LOAN: The Loan is to be used by Borrower solely to pay the costs of residential construction and for such other purposes as Agency expressly agrees to in the loan agreement for the Loan, and such other agreements as may be generally required by the Agency for the use of the funding source for the Loan.
4. PRINCIPAL AMOUNT: The combined principal amount of the Loan will be the lesser of (a) Four Million Eight Hundred Thousand Dollars (\$4,800,000), or (b) an amount to be determined prior to close of the Loan based on a project budget approved by Agency.

However, the combined indebtedness of the Property must not exceed ninety percent of the appraised value as determined by the Agency.

5. TERM OF LOAN: The unpaid balance of the Loan will be all due and payable 384 months or 32 years from the making of the loan.
6. INTEREST RATE: The Loan will bear simple interest at Four Percent (4%) per annum. Interest shall be calculated on the basis of a 365-day year and actual days elapsed.
7. AMORTIZATION: Loan shall amortize as permitted by monthly payments.
8. MONTHLY PAYMENT: Monthly principal and interest payments shall be deferred from the Loan's Effective Date through the first 204 months. Beginning in month 205, monthly installments shall be made according to the payment schedule contained in the Loan Agreement as based on a 1.2 debt coverage ratio. Monthly payments shall be applied first to outstanding interest accrued and unpaid and then to principle.
9. SOURCE OF LOAN FUNDS: Agency is making the Loan from the following sources of funds, and the Loan is subject to all requirements related to the use of such, whether Agency requirements or otherwise: City Home Partnership Investment Program (HOME) funds and former low-moderate Tax Increment funds. This Loan is conditioned upon Borrower's acceptance of Agency's requirements and conditions related to such lending programs and funding sources, including among others, the required forms of agreements for the Loan; the requirements for covenants, conditions and restrictions upon the Property; and insurance and indemnity requirements.

**Borrower acknowledges that, as a condition of the Agency's making of the Loan, the Property will be subject to restrictions on future sales and rentals which may result in less income to Borrower than could otherwise be realized, and that such restrictions run with the land, and during their operational term, will bind all successors in interest.**

\_\_\_\_\_ (Borrower Initial)

**Borrower acknowledges that every contract for new construction or rehabilitation construction of housing that includes 12 or more units assisted with HOME funds will contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-5), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); (24 C.F.R. 92.354). Borrower also acknowledges that any project containing a "subsidy" may be subject to state prevailing wages, which are the responsibility of the Borrower and Borrower's contractor.**

\_\_\_\_\_ (Borrower Initial)

10. ACCELERATION: Agency shall have the right to accelerate repayment of the Loan in the event of a default under any Loan Document or upon sale, transfer or alienation of the Property except as specifically provided for in the Loan documents.
11. SECURITY: The Loan shall be evidenced by promissory note(s) secured by a deed of trust with assignment of rents against the fee and/or leasehold interest in the Property and Improvements, which shall be a second lien upon the Property and Improvements subject only to the first mortgage and such other items as the Agency may approve in writing. The Loan shall also be secured by security agreements. The Agency may subordinate said deeds of trust in order to accommodate completion of rehabilitation of the Property.
12. LEASE AND RENTAL SCHEDULE: All leases of the Property and Improvements shall be subject to Agency's approval prior to execution. Borrower shall not deviate from the rental schedule presented in Borrower's application for the Loan without Agency's prior written approval.
13. PROOF OF EQUITY: Borrower shall provide proof of equity for the Property and Improvements in the amount of \$ 15,500,000, to be evidenced by a fully executed firm commitment with a tax credit equity investor.
14. OTHER FINANCING: Borrower, as a requirement of the Loan, shall procure and deliver to Agency evidence satisfactory to Agency that Borrower has obtained the following described financing which may be secured by a lien upon the Property and Improvements superior or subordinate to Agency's liens, and which shall be otherwise on terms and conditions acceptable to Agency:

Residential and Retail Space: Construction Financing from a private lender(s) in an amount(s) sufficient to complete construction of the Property according to a scope of work as approved by Agency and made for a term not less than that specified in the Schedule of Performances for completion of construction, and in any event not less than the time necessary to fulfill all conditions precedent to funding of the permanent financing. Commitments for permanent financing sufficient to remove all liens and for a term of not less than 15 years including an amortized payment for no less than 35 years.

Parking Garage: Construction and Permanent Financing from a City of Sacramento Loan (City Loan) in an amount(s) sufficient to complete construction of the parking garage included in the development but separate from the residential and retail space. The City Loan shall be in an amount not less than Six Million Two Hundred Thousand Dollars (\$6,200,000) or sufficient to pay a guaranteed maximum payment (GMP) construction contract as contained in the Development Budget and other associated costs necessary to construct the garage. The City Loan shall have a maturity date of 55 years from the date of closing, a zero interest rate, and all payments of principal shall be deferred until the maturity date. The City Loan shall be subordinated to the Agency Loan.

Such commitments for financing shall not require modification of Agency loan documents, or any term of this commitment letter.

Such commitments shall not be based upon sources and uses of Project funds that are different from those approved by Agency for the project or be subject to conditions which require amendment of the loan documents or other agreements.

15. EVIDENCE OF FUNDS: Prior to the first disbursement of the Loan, Borrower must demonstrate evidence of adequate and assured funding to complete the development of the Project in accordance with the Agency's requirements. Borrower's evidence of available funds must include only one or more of the following: a) Borrower equity; b) firm and binding commitments for the Project from financial institution(s) or from other lender(s) approved by Agency in its absolute discretion; and c) Agency's contribution, provided, however, that Agency is not obligated by this letter to make any contribution not stated in the terms of the letter.
16. SOILS AND TOXIC REPORTS: Borrower must submit to Agency a soils report prepared by a licensed soils engineer and a hazardous substances report made in accordance with the American Society for Testing and Materials "Standard Practice for Environmental Site Assessments; Phase I Environmental Site Assessment Process" (Designation E1527-93) prepared by a licensed or registered environmental engineer or other qualified party prior to Loan closing. Borrower must, as a condition of disbursement of Loan funds, give assurances satisfactory to the Agency that hazardous materials are not present on the Property or that any hazardous materials on the Property have been remediated and that no further remediation is then required by the environmental agency having responsibility for monitoring such remediation.
17. LOAN IN BALANCE: Borrower will be required to maintain the Loan "in balance". The Loan is "in balance" whenever the amount of the un-disbursed Loan funds, the remaining sums to be provided by the Borrower and the loan funds from other project lenders are sufficient, in the sole judgment of the Agency, to pay for the remainder of the work to be done on the project as required by written agreement with the Agency. Should the Agency determine that the Loan is not "in balance", the Agency may declare the Loan to be in default.
18. PLANS AND SPECIFICATION: Final plans and specifications for the project must be in accord with the proposal approved as part of the Loan application. Final plans and specifications will be subject to Agency's final approval prior to the disbursal of Agency Loan funds. Borrower must obtain Agency's prior written consent to any change in the approved plans and specifications or any material deviation in construction of the project.
19. ARCHITECTURAL AGREEMENT: The architectural agreement ("Agreement") for the preparation of the plans and specifications and other services shall be subject to Agency's approval. Agency may require an assignment of Borrower's interest in and to the Agreement as security for the Loan.
20. CONSTRUCTION CONTRACT: The construction contract ("Contract"), and any change orders issued thereunder, and the contractor ("Contractor") to be retained by Borrower to construct the Improvements shall be subject to Agency's approval. Agency may require an assignment of Borrower's interest in and to the Contract as security for the Loan. Agency shall require Contractor to provide a performance and payment bond in a form acceptable to Agency for the amount of the Contract.

21. RETENTION AMOUNT: The Agency shall retain ten percent (10%) as retention from each disbursement for construction related expenses, not to exceed a total of ten percent (10%) of the total amount of the Loan.
22. ENVIRONMENTAL REVIEW: The availability of federal funds for use in the Project is contingent upon the Federal Department of Housing and Urban Development's consent to the Agency's request for release of funds. Environmental review pursuant to NEPA will be completed for the project prior to any choice limiting action.
23. COST BREAKDOWN: Borrower shall deliver to Agency for Agency's approval prior to commencement of work a detailed cost breakdown of the cost of constructing, financing and other costs of developing the Improvements, which breakdown conforms to the project plans and specification and the budget approved with this commitment. Borrower shall also deliver a list of all contractors and subcontractors to be employed in connection with the construction of the Improvements. If required by the Agency, Borrower shall also submit copies of all bids received for each item of work to be performed as well as copies of executed contracts and subcontracts with acceptable bidders.

All contracts, subcontracts, contractors, and subcontractors shall be subject to Agency's approval prior to close of the Loan. Agency also reserves the right to require performance and material payment bonds on any or all contractors, or in lieu of bond a letter of credit acceptable to Agency.

Agency shall make disbursements of the Loan based on a cost breakdown that lists line items in cost categories. Agency shall require that Borrower provide documentation supporting all requests for disbursement of Loan funds, including proof of work done and actual expenditure. Agency shall conduct inspections of the Property to assure that the work was done before making a disbursement.

24. PREVAILING WAGE: Prior to Loan closing, Borrower shall provide a determination from the California Department of Industrial Relations ("DIR") acceptable to the Agency stating that the residential component of the Development is exempt from the payment of prevailing wages.
25. COST SAVINGS: At completion of construction, borrower shall submit to Agency a cost certification prepared by a qualified, independent auditor acceptable to Agency, which cost certification shall indicate the amounts actually spent for each item in the cost breakdown. If there is an aggregate savings in the total of all such cost breakdown items from the cost breakdown items in the original budget approved by the Agency, the Agency shall withhold for itself as loan repayment, one-half of such savings from the amount of retention then held by the Agency, and the Loan balance shall be reduced by the amount so withheld. The Agency, in its sole discretion, shall determine any reduction and/or repayment of the Agency loan based upon this cost certification and the original approved budget for the project.
26. START OF CONSTRUCTION: Borrower shall commence construction at the earliest possible date subject to the conditions of this Agency and other involved lenders, but no later than March 31, 2013.

27. SECURITY CAMERAS AND OUTSIDE LIGHTING. Project shall include installation of a web based security camera system at vehicular driveways, pedestrian entrances and community areas, all as approved by the Agency. In addition, project will include a security patrol if necessary.
28. HAZARD INSURANCE: Borrower shall procure and maintain fire and extended coverage insurance in a form and substance approved by Agency. Coverage shall be for protection against loss of, or damage to the Improvements or materials for their construction to their full insurable value. Borrower shall also procure and maintain insurance against specific hazards affecting Agency's security for the Loan as may be required by Agency, governmental regulations, or any permanent lender. All such policies shall contain a standard mortgagee loss payable clause in favor of Agency. The insurance required shall be written with a deductible of not more than TEN THOUSAND DOLLARS (\$10,000.00).
29. PUBLIC LIABILITY AND OTHER INSURANCE: Borrower must procure and maintain public liability and property damage insurance (with Agency named as additional insured) in a form approved by Agency. Coverage must be approved by Agency and must be in at least the following limits of liability: (1) Commercial General Liability insurance in Insurance Services Office ("ISO") policy form CG 00 01 Commercial General Liability (Occurrence) or better with limits of liability, which are not less than \$1,000,000, per occurrence limit; \$5,000,000 general aggregate limit, and \$5,000,000 products and completed operations aggregate limit, all per location of the Project; (2) Property damage liability of \$1,000,000 each occurrence, \$1,000,000 single limit and \$1,000,000 aggregate; (3) Contractual liability for Bodily Injury of \$1,000,000 each occurrence, for Property Damage of \$1,000,000 each occurrence and \$1,000,000 aggregate, and Personal Injury with Employment Exclusion Deleted of \$1,000,000 aggregate; and (4) Comprehensive Automobile Liability for any vehicle used for or in connection with the Work of \$1,000,000. The insurance required shall be written with a deductible of not more than TEN THOUSAND DOLLARS (\$10,000). Borrower must also procure and maintain workers' compensation and all other insurance required under applicable law, as required by law and as approved by Agency.
30. TITLE INSURANCE: Borrower must procure and deliver to Agency an ALTA Lender's Policy of Title Insurance, together with such endorsements as Agency may require, including but not limited to CLTA endorsement nos. 100, 116, and 102.5/102.7 insuring Agency in an amount equal to the principal amount of the Loan, that Agency's Deeds of Trust constitutes a first or second lien or charge upon the Property and Improvements subject only to such items as shall have been approved by Agency. There must be no exceptions permitted for mechanics liens. Title insurance for the Loan must be issued by a title insurer approved by Agency.
31. ORGANIZATIONAL AGREEMENTS: Borrower must submit to Agency certified copies of all of Borrower's organizational documents, including all amendments, modifications or terminations: if a corporation, Borrower's Articles of Incorporation and By-Laws; if a partnership, its Partnership Agreement and, as applicable, Certificate of Limited Partnership or Statement of Partnership; if a Limited Liability Company, its Articles of Organization and its Operating Agreement; and in all cases with all exhibits and amendments to such documents, fictitious business name statements, other related filings or recorded documents

and such related documents as Agency may request. If it is a corporation, Borrower must submit a corporate borrowing resolution referencing this Loan. If Borrower is other than a corporation, Borrower must submit such proof of authority to enter this Loan as may be required under the organizational documents.

32. PURCHASE OF PROPERTY: Borrower shall provide Agency with copies of all documents relating to Borrower's purchase of the Property.
33. FINANCIAL INFORMATION: Prior to close of the Loan and during its term, Borrower must deliver to Agency such additional financial information as may be requested by Agency. Agency reserves the right to review and approve financial statements and other credit information and references prior to closing. During the term of the Loan, Borrower must deliver to Agency a monthly rent-roll including household composition information and operating statements with respect to the Property and Improvements, as Agency may request.
34. MANAGEMENT AGREEMENT: Prior to execution, Borrower must submit to Agency any agreement providing for the management or operation of the Property or Improvements by a third party which agreement is subject to Agency Approval.
35. RESIDENT SERVICES PLAN: Borrower shall submit for approval a detailed resident services plan including but not limited to, the following information: 1) identification of all entities responsible for providing social services to Project tenants and each entity's role in the provision of those services; 2) the services will be provided for a minimum of 20 hours per week; 3) confirmation services will be provided according to the Agency's minimum requirements as specified in the Multifamily Lending and Mortgage Revenue Bond Policies; 4) a description of the programs to be offered, and; 5) a Proforma social services budget.
36. LOW INCOME HOUSING TAX CREDITS("LIHTC"): Borrower represents that as a condition of closing this Loan it is applying for an allocation of LIHTC's and agrees to perform all actions and to meet all requirements to maintain the LIHTC allocation if granted.
37. DOCUMENTATION: This letter is not intended to describe all of the requirements, terms, conditions and documents for the Loan, which shall also include customary provisions and documents for an Agency transaction of this type. All documents to be delivered to or approved by Agency must be satisfactory to Agency in all respects. Borrower must promptly deliver to Agency any further documentation that may be required by Agency.
38. EXTENTION OF COMMITMENT TERM: If the Project is not successful in securing the funding within the timeframe of this commitment, Agency has sole discretion to modify and or extend the expiration of the commitment letter to a date no later December 31, 2013.
39. CONSISTENCY OF DOCUMENTS: As a material obligation under this commitment letter, Borrower shall assure that the loan documents for the Project are consistent with lender's commitment approved by the Agency and comply, in all respects, with this commitment letter.

40. CHANGES OR AMENDMENTS: No documents or contracts which are to be delivered to Agency or are subject to Agency's review or approval shall be modified or terminated without the prior written approval of Agency.
41. ACCEPTANCE OF THIS COMMITMENT: Borrower's acceptance of this Commitment shall be evidenced by signing and delivering to Agency the enclosed copy of this letter. Until receipt of such acceptance by Agency, Agency shall have no obligation under this letter. Agency may withdraw this commitment at any time prior to Borrower's acceptance.

Sincerely,

LaShelle Dozier  
Executive Director

The undersigned acknowledges and accepts the foregoing Commitment and its terms and conditions.

Dated:

**BORROWER:**  
T9 Affordable Housing Partners, LP,  
A California limited partnership

By: Urban Core, LLC,  
A California limited liability company  
Its: Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_