

RESOLUTION NO. 2005-167

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF **MAR 15 2005**

WILLOW TREE APARTMENTS: APPROVAL OF NOT MORE THAN \$1,000,000 DEVELOPMENT LOAN (HOME FUNDS); EXECUTION OF LOAN COMMITMENT, LOAN AGREEMENT, AND RELATED DOCUMENTS WITH DHI WILLOW TREE ASSOCIATES, L.P., A CALIFORNIA LIMITED LIABILITY COMPANY; RELATED BUDGET AMENDMENT

WHEREAS: On June 29, 2004 the City Council authorized the Sacramento Housing and Redevelopment Agency to allocate One Million Dollars (\$1,000,000) from City Home funds to the Willow Tree Apartment Project.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO:

Section 1: All of the evidence presented having been duly considered, the findings, including the environmental findings regarding this action, as stated in the staff report that accompanies this resolution, are approved.

Section 2: The Loan Commitment, attached to and incorporated in this resolution by this reference, for the financing of the Willow Tree Apartments project ("Loan") is approved and the Sacramento Housing and Redevelopment Agency is authorized to execute and transmit the Loan Commitment to DHI Willow Tree Associates, L.P. As stated in the attached Loan Commitment, the loan amount shall be for \$1,000,000 if State tax credits are not received; or \$817,000 if the project receives an allocation of State tax credits.

Section 3: Subject to the satisfaction of conditions in the Loan Commitment, the Sacramento Housing and Redevelopment Agency is authorized to prepare and execute any and all documents required for the making of the Loan (including without limitation the documents necessary for the use of the allocated funds and the documents necessary to make and reasonably administer the Loan); provided, however that:

- (a) The Loan shall be made on the terms set out in the Loan Commitment and the staff report that accompanies this resolution; and
- (b) Agency Counsel shall prepare the Loan documents in accordance with the Loan Commitment and the staff report that accompanies this resolution; and in accordance with all applicable laws, regulations and policies regarding the making of the Loan and the use of the allocated funds.

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Section 4: The Sacramento Housing and Redevelopment Agency is authorized to execute the Loan Commitment and to execute the Loan documents in a form approved by the Agency Counsel and to enter into other agreements, execute other documents, and perform other actions necessary to fulfill the intent of the staff report that accompanies this resolution, the Loan Commitment, in accordance with their respective terms, and to ensure proper repayment of Agency funds, including without limitation, subordination, extensions and restructuring of payments, all as approved by Agency Counsel.

Section 5: The Sacramento Housing and Redevelopment Agency is authorized to make technical amendments to said agreements and documents with the approval of Agency Counsel, which amendments are in accordance with the Loan Commitment, with Agency policy, with this resolution, with good legal practices for the making of such a loan, and with the staff report that accompanies this resolution.

HEATHER FARGO

MAYOR

ATTEST:

SHIRLEY CONCOLINO

CITY CLERK

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March 16, 2005

Mr. Thomas Dawson
DHI Willow Tree Associates, L.P.
3 Harbor Drive, Suite 302
Sausalito, CA 94965
Attn: Tim Fluetsch

RE: Conditional funding commitment, Willow Tree Apartments

Dear Mr. Dawson:

On behalf of the Sacramento Housing and Redevelopment Agency ("Agency"), we are pleased to advise you of its commitment of rehabilitation and permanent loan funds ("Loan") from the City HOME funds for the purpose of financing the acquisition, rehabilitation and permanent financing of that certain real property located at 4300 Norwood Avenue, 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 and the attached loan document forms 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, 2005.

1. PROJECT DESCRIPTION: The project is the acquisition and rehabilitation of a 108 unit multi-family apartment complex. The project will be 98% affordable to families earning at or less than 50% of the area median income, and will include either for (1) an Agency loan of \$1,000,000 if state tax credits are not received or (2) an Agency loan of

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\$8170,000 if state tax credits are received, and in both cases include 106 HOME units for households at or below very low income levels (50% area median income). The project is to remain affordable for a period of 55 years. The developer is required to renew the Section 8 contract as long as it is offered by HUD.

2. BORROWER: The name of the Borrower for the Loan is DHI Willow Tree Associates, L.P. or a limited liability company or limited partnership to be formed by Pacific American Properties, Inc.
3. PURPOSE OF LOAN: The Loan is to be used by Borrower solely to pay the costs of acquisition, rehabilitation and permanent financing or 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 funding source for the Loan.
4. PRINCIPAL AMOUNT:
 - (a) If the developer applies for, but does not receive an allocation of State Low Income Housing Tax Credits, the combined principal amount of the Loan will be the lesser of (a) One Million Dollars (\$1,000,000), 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.
 - (b) If the developer the receives an allocation of State Low Income Housing Tax Credits, the combined principal amount of the Loan will be the lesser of (a) Eight Hundred Seventeen Thousand Dollars (\$817,000), 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.
5. TERM OF LOAN: The unpaid balance of the Loan will be all due and payable 360 months from the date of the note.
6. INTEREST RATE: The Loan will bear 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:
 - (a) For the \$1,000,000 Loan, principal and interest payments shall be deferred for the first one hundred eight (108) months of the term. In month one hundred nine (109), all unpaid interest will be added to all unpaid principal and step payments on interest

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and principal shall begin. In months one hundred nine (109) through three hundred sixty (360), the following payment schedule will be followed:

Months 109-120:	\$3,750	per month
Months 121-132:	\$4,167	per month
Months 133-144:	\$4,792	per month
Months 145-156:	\$5,208	per month
Months 157-168:	\$5,833	per month
Months 169-180:	\$6,250	per month
Months 181-192:	\$6,667	per month
Months 193-204:	\$7,083	per month
Months 205-216:	\$7,708	per month
Months 217-228:	\$8,333	per month
Months 229-240:	\$8,750	per month
Months 241-252:	\$9,167	per month
Months 253-264:	\$9,792	per month
Months 265-276:	\$10,417	per month
Months 277-288:	\$10,833	per month
Months 289-300:	\$11,458	per month
Months 301-312:	\$12,083	per month
Months 313-324:	\$12,500	per month
Months 325-336:	\$13,333	per month
Months 337-348:	\$13,750	per month
Months 349-360:	\$10,419	per month

All unpaid principal and interest shall be due and payable three hundred sixty (360) months from the date of the note.

- (b) For the \$817,000 Loan, principal and interest payments shall be deferred for the first one hundred nine (109) months of the term. In month one hundred nine (109), all unpaid interest will be added to all unpaid principal and step payments on interest and principal shall begin. In months one hundred nine (109) through three hundred twenty four (324), the following payment schedule will be followed:

Months 109-120:	\$3,750	per month
Months 121-132:	\$4,167	per month
Months 133-144:	\$4,792	per month
Months 145-156:	\$5,208	per month
Months 157-168:	\$5,833	per month
Months 169-180:	\$6,250	per month
Months 181-192:	\$6,667	per month
Months 193-204:	\$7,083	per month
Months 205-216:	\$7,708	per month

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Months 217-228:	\$8,333	per month
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Months 241-252:	\$9,167	per month
Months 253-264:	\$9,792	per month
Months 265-276:	\$10,417	per month
Months 277-288:	\$10,833	per month
Months 289-300:	\$11,458	per month
Months 301-312:	\$12,083	per month
Months 313-324:	\$5,740	per month

All unpaid principal and interest shall be due and payable three hundred sixty (360) months from the date of the note.

8. MONTHLY PAYMENT: Monthly payments of principal and interest on the Loan shall begin one hundred nine (109) months from the date of the note.
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 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. 327-332). (24 C.F.R. 92.354). Borrower also acknowledges that any project containing a

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“subsidy” may be subject to state prevailing wages, which are the responsibility of the Borrower and Borrower’s contractor.

_____ (Borrower Initial)

10. APPROVAL OF DISBURSEMENTS: Borrower shall submit all disbursement requests to the Agency simultaneous to lender, tax credit investor, and/or any other funding source for the project for approval. Agency shall have five business days from the date of a complete disbursement request to approve or deny, in whole or part, such disbursement request. Borrower shall ensure that appropriate language to this effect is included in lender and partnership documents.

Agency shall only approve disbursements of the Loan based on a cost breakdown that restricts disbursements to line items in cost categories in Agency approved budget. Agency shall require that Borrower provide documentation supporting all requests for disbursement of Loan funds. Agency shall conduct inspections of the Property prior to disbursing, or approving disbursement requests, of Loan funds.

If the Agency does not approve a draw request, in whole or in part, or the Borrower fails to submit a draw request to the Agency for approval, the Agency loan shall be reduced by the same amount of the disallowed draw item(s).

11. 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.
12. 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 third lien upon the Property and Improvements subject only to senior and subordinate bond debt 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.
13. 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.

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14. PROOF OF EQUITY: Borrower shall provide proof of equity for the Property and Improvements in the amount of:
- (a) Federal and State tax credit equity no less than \$2,394,069 and deferred developer fee in the amount of \$716,552; or
 - (b) Federal tax credit equity no less than \$2,211,209 and deferred developer fee in the amount of \$716,552.
15. OTHER FINANCING: Borrower represents that as a condition of closing this Loan it is applying for allocations of Federal and State LIHTCs and agrees to perform all actions and to meet all requirements to maintain the LIHTC allocations if granted.

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:

Construction Financing from a private lender(s) in an amount(s) sufficient to complete rehabilitation 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.

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 agreement or other agreements.

16. 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.

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17. SOILS AND TOXIC REPORTS: Borrower must submit to Agency 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.
18. LOAN IN BALANCE: Borrower will be required to maintain the Loan "in balance". The Loan is "in balance" whenever the amount of the undisbursed Loan funds, the remaining sums to be provided by the Borrower and the loan funds from other project lenders are sufficient, in the sole judgement 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.
19. 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.
20. RETENTION AMOUNT: The Agency shall retain ten percent (10%) as retention from each disbursement, not to exceed a total of ten percent (10%) of the total amount of the Loan.
21. 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

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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.

22. 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, two-thirds 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.
23. 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 January 1, 2006.
24. COMPLETION OF CONSTRUCTION: Borrower shall complete the construction of the Improvements no later than June 30, 2007.
25. HAZARD INSURANCE: Borrower shall procure and maintain fire and extended coverage insurance or in lieu such insurance, Builder's Risk completed value 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).
26. 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

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Agency and must be in at least the following limits of liability: Bodily injury liability of \$1,000,000 each occurrence and \$1,000,000 Aggregate, Products and Completed Operations; Property damage liability of \$1,000,000 each occurrence, \$1,000,000 single limit and \$1,000,000 aggregate; 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 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.

27. TITLE INSURANCE: Borrower must procure and deliver to Agency a 1970 or 1987 ALTA LP-10 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 third 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.
28. 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.
29. PURCHASE OF PROPERTY: Borrower shall provide Agency with copies of all documents relating to Borrower's purchase of the Property.
30. FINANCIAL INFORMATION: During the term of the Loan, Borrower shall deliver to Agency within 120 days of the end of each fiscal year an audited income and expense statement, a balance sheet, and a statement of all changes in financial position signed by authorized officers of Borrower. Prior to close of the Loan and during its term, Borrower must deliver to Agency such additional financial information as may be requested by

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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.

31. MANAGEMENT AGREEMENT: The Borrower shall provide competent and responsible management of the Project by a management company approved by the Agency, pursuant to a written management agreement approved by the Agency. 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. In the event that the Agency determines, in its sole discretion that the management company for the Project is not performing in a competent and responsible manner, the Agency may require the removal of the management company. The Borrower shall not enter into any management agreement or arrangement with any other party with respect to management of the Project without the Agency's prior written consent, such consent not to be unreasonably withheld. The Borrower shall not materially modify, amend or terminate any approved management agreement without the Agency's prior written consent, which consent will not be unreasonably withheld. The Borrower shall contract with a management company approved by the Agency for the management of the project after completion.
32. 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.
33. 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.
34. 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.
35. Project shall renew U.S. Department of Housing and Urban Development (HUD) Section 8 contract, or successor program, as long as renewals or replacement contract is offered by HUD.

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36. Project shall include a security camera system approved by the Agency.

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.

Yours truly,

Cassandra H.B. Jennings
Deputy Executive Director

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

Dated:
BORROWER: DHI Willow Tree Associates, L.P.

By: _____
Thomas Dawson
General Partner

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