

RESOLUTION NO. 2007-159

Adopted by the Sacramento City Council

March 13, 2007

NATOMAS FAMILY APARTMENTS: APPROVAL OF \$1,093,000 LOAN; EXECUTION OF LOAN AGREEMENT AND RELATED DOCUMENTS WITH CIC NATOMAS L.P.; RELATED BUDGET AMENDMENT

BACKGROUND

- A. CIC Natomas, L.P. has requested allocation of One Million Ninety-Three Thousand Dollars (\$1,093,000) from the City Housing Trust Fund to the Natomas Family Apartments project to assist in funding the costs of acquisition and construction of a 135 unit housing project that will include 47 extremely low-income, 44 very low-income and 43 low-income units and 1 manager's unit.
- B. The Natomas Family Apartments project qualifies for Housing Trust Fund funding under Sacramento Housing and Redevelopment Agency guidelines.
- C. The City of Sacramento has reviewed the environmental impacts of the project in the context of the larger master project and has issued a mitigated negative declaration for the larger project entitled Pardee at Natomas Initial Study/Mitigated Negative Declaration (P05-129) ("Negative Declaration").

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

- Section 1. The Negative Declaration adequately considered the environmental impacts of the project and the mitigation measures adopted pursuant to the Negative Declaration are adequate to mitigate the significant environmental impacts of the project to a less than significant level; and therefore, the Negative Declaration is approved and adopted for the actions contained in this resolution.
- Section 2. The Sacramento Housing and Redevelopment Agency ("Agency") is authorized to amend the Agency Budget to transfer \$1,093,000 from the City Housing Trust Fund to the Natomas Family Apartments project.
- Section 3. The Loan Commitment, attached to and incorporated in this resolution by this reference, for financing the Natomas Family Apartments project with Housing Trust Funds in the amount of \$1,093,000 is approved and the Agency is authorized to execute and transmit the Loan Commitment to CIC Natomas, L.P.

Section 4. Subject to the satisfaction of conditions in the Loan Commitment, the Agency is authorized to prepare and execute all Loan documents required for making the \$1,093,000 Loan for a term of 55 years, with an interest rate of 4% (simple), and a loan repayment schedule as detailed in the Loan Commitment, with CIC Natomas, L.P. to fund the acquisition and construction of Natomas Family Apartments.

Section 5. The Agency is authorized to enter into and execute other documents and perform other actions necessary to fulfill the intent of the staff report and the Loan Commitment that accompany this resolution, in accordance with their respective terms, and to ensure proper repayment of the Agency funds including without limitation, subordination, extensions and restructuring of payments, all as approved by Agency Counsel and in accordance with the intent of the Agency in making the Loan.

Section 6. The Agency is authorized to make technical amendments to said agreements and documents with approval of Agency Counsel, which amendments are in accordance with the Loan Commitment, with Agency policy, with this resolution and with good legal practices for making of such a loan.

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Exhibit A: Loan Commitment – 8 pages

Adopted by the City of Sacramento City Council on March 13, 2007 by the following vote:

Ayes: Councilmembers, Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, and Waters.

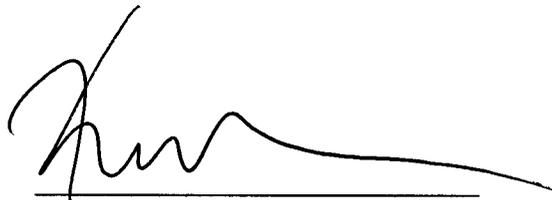
Noes: None.

Abstain: None.

Absent: Mayor Fargo.

Attest:


Shirley Concolirio, City Clerk


Kevin McCarty, Vice Mayor

Date: February 15, 2007

Chelsea Investment Corporation
725 South Coast Hwy. 101
Encinitas, CA 92024
Attn: Wally Dieckmann

RE: Conditional Funding Commitment, Natomas Family Apartments

Dear Mr. Dieckmann:

On behalf of the Sacramento Housing and Redevelopment Agency ("Agency"), we are pleased to advise you of its commitment of acquisition, construction, and permanent loan funds ("Loan") from the City of Sacramento Low-Income Housing Trust Fund for the purpose of financing the development of that certain real property located at the southwest corner of Del Paso Road and the future extension of Blackrock Road, 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 is subject to approval by the Sacramento City Council.

This commitment is contingent upon the Borrower receiving an award of Multifamily Housing Program (MHP) funds from the State of California Department of Housing and Community Development in either of the first two MHP funding rounds following the date of this commitment letter. In any event, this commitment will expire on January 31, 2008.

1. PROJECT DESCRIPTION: The project is the new construction of a 135-unit multi-family apartment complex to be located at the southwest corner of Del Paso Road and the future extension of Blackrock Road, on portions of assessor's parcel numbers 225-0060-026 and -027. A total of 47 units will be affordable to families earning less than 30 percent of the area median income, 44 units will be affordable to families earning less than 50 percent of the area median income, and an additional 43 units will be affordable to families earning less than 55 percent of the area median income. One unit will be an unrestricted manager's unit.
2. BORROWER: The name of the Borrower for the Loan is Chelsea Investment Corporation, or a limited liability company or limited partnership to be formed by Chelsea Investment Corporation.
3. PURPOSE OF LOAN: The Loan is to be used by Borrower solely to pay the costs of acquisition, construction, 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: The combined principal amount of the Loan will be the lesser of (a) One Million, Ninety-Three Thousand Dollars (\$1,093,000), 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 Loan shall mature 55 years from the date of the first disbursement.
6. INTEREST RATE: The Loan shall 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 AND MONTHLY PAYMENTS: Due to the use of Multifamily Housing Program (MHP) funding from the California Department of Housing and Community Development (HCD), the Agency loan repayments will be subject to HCD regulations, which will require the Agency loan payments to be residual receipts repayments from available property cash flow only.

HCD regulations will require the Borrower to submit an annual report and operating budget verifying project compliance with all MHP requirements for the applicable year. Cash flow available for distribution will be divided and distributed annually to the developer, and to HCD and the Agency in proportion to the loan amounts in the project. All outstanding principal and accrued interest on the Agency loan will be due and payable at maturity.

8. 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: \$1,093,000 City Housing Trust Fund. 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)**

9. 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.
10. 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 bond debt and an MHP loan from the California Department of Housing and Community Development 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.
11. 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.
12. PROOF OF EQUITY: Borrower shall provide proof of equity for the Property and Improvements in the amount of no less than \$11,000,000 in Low Income Housing Tax Credit Equity, no less than \$462,000 in deferred developer fee, no less than \$5,800,000 in donated land value, and no less than \$2,200,000 in the form of a cash contribution.
13. 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:

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 “take out” all liens senior to the Agency’s lien, consistent with MHP requirements.

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 DDA, OPA or other agreements.

14. 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.
15. 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.
16. 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.
17. 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.

18. 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.
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.
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 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, 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.

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 June 20, 2008.
24. COMPLETION OF CONSTRUCTION: Borrower shall complete the construction of the Improvements no later than June 20, 2010.
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 Agency and must be in at least the following limits of liability: Bodily injury liability of \$1,000,000 each occurrence and \$5,000,000 Aggregate, Products and Completed Operations; Property damage liability of \$1,000,000 each occurrence, \$1,000,000 single limit and \$5,000,000 aggregate; Contractual liability for Bodily Injury of \$1,000,000 each occurrence, for Property Damage of \$1,000,000 each occurrence and \$5,000,000 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 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: 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.
32. LOW INCOME HOUSING TAX CREDITS("LIHTC"): Borrower represents that as a condition of closing this Loan it is applying for an allocation of LIHTCs and agrees to perform all actions and to meet all requirements to maintain the LIHTC allocation if granted.
33. SECURITY AND LIGHTING: Project shall include a security camera system approved by the Agency and lighting adequate to properly illuminate the parking area and all common spaces
34. SOCIAL SERVICES PLAN: Borrower shall provide Agency with a detailed social 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 number of hours per week that services will be provided; 3) a description of the programs to be offered, and; 4) a proforma social services budget.

35. 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.
36. 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.
37. 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.
38. 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,

Anne M. Moore
Executive Director

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

Dated:

BORROWER:

By: _____
[Name, Title]