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May 7, 2012

Todd Vermillion, Analyst  
California Department of Finance  
915 L Street  
Sacramento, California 95814

Re: Loan of \$2,680,000 for Construction and Development of the Cinnamon Villas Affordable Housing Project as an Enforceable Obligation under Health & Safety Code 34171(d)(1)(E)

Dear Mr. Vermillion:

The Lemoore City Manager has requested a legal opinion regarding a loan of \$2,680,000, in low and moderate income housing funds, for construction and development of the Cinnamon Villas Affordable Housing Project (the Project).

On March 15, 2011, the Board of the Redevelopment Agency of the City of Lemoore (the RDA) approved Resolution No. 2011-03 entitled "A Resolution of the Redevelopment Agency of the City of Lemoore Authorizing the Commitment of a Loan of \$2,680,000 Low and Moderate Income Housing Funds for Construction and Development of the Cinnamon Villas Affordable Housing Project, and the Negotiation and Execution of Loan Documents" (the Resolution).

The Resolution authorized and approved the loan and the terms and conditions of the loan to Pacific West Communities, Inc. (the Developer). As long as Pacific West secured financing, in the form of Low Income Housing Tax Credits, the Redevelopment Agency would disburse the funds. Pacific West relied upon the loan from the Redevelopment Agency in submitting its application for Low Income Housing Tax Credits and by moving forward with the Project. The allocation of Tax Credits was contingent upon the loan from the Redevelopment Agency. Pacific West received notification of approval of its Low Income Housing Tax Credits on June 22, 2011, removing the only contingency for payment of the loan.

The obligation to make the loan was an enforceable obligation as of March 15, 2011 where all of the terms of the loan were described in the Resolution approved by the RDA. Accordingly, the loan is an enforceable obligation pursuant to Health & Safety Code section 34171(d)(1)(E) which provides:

“(E) Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy. However, nothing in this act shall prohibit either the successor agency, with the approval or at the

*A Professional Corporation*

Todd Vermillion, Analyst

May 7, 2012

Page 2

direction of the oversight board, or the oversight board itself from terminating any existing agreements or contracts and providing any necessary and required compensation or remediation for such termination.”

A legally binding and enforceable agreement or contract can assume many forms under the law of contract formation. Here, the Resolution is specific regarding the terms of the loan. Reducing the terms of the loan to a note secured by a deed of trust, identified as the “Loan Documents” in the Resolution, is not the determinative date of contract formation. Rather, it is the date that the Resolution was adopted on March 15, 2011. No further action was required by the RDA Board. The RDA’s staff was empowered to prepare the Loan Documents “. . . in accordance with the terms listed above” (¶ 7) and “. . . to execute all other documents and take all other steps necessary or appropriate to carry out the obligations of the Agency under the Loan Documents, and to finalize and carry out the intent and purposes of the Agency Board pursuant to this resolution.” (¶ 8) The Resolution did not contemplate or intend further negotiation of the terms in the loan. The Resolution specifically stated that “If the terms of the Loan Documents are not accepted by Pacific West Communities, Inc. or its limited partnership affiliate as set forth herein, this resolution shall be null and void.” Although subsection (E) does authorize termination of any existing agreements or contracts, compensation or remediation for such termination could result in significant damages incurred by the Developer in reliance upon the specific terms and conditions of the loan as set forth in the Resolution. The loan funds were appropriated pursuant to the Resolution on March 15, 2011.

In my opinion, the terms of the Resolution approved on March 15, 2011, which specifically described the terms and conditions of the loan as appropriated, is an enforceable obligation under subsection (E).

Sincerely,

LOZANO SMITH



Jerome M. Behrens

JMB/sr/kjo