

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 7/14/05
Department Name: Housing and Community Dev.
Department No.: 055
Agenda Date: 7/26/05
Placement: Administrative
Estimate Time:
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Ed Moses
Director, Housing and Community Development

STAFF CONTACT: Mike Sederholm
560-1090

SUBJECT: Subordination Agreement for County Transition House Loan

Recommendation(s):

That the Board of Supervisors:

1. Authorize the Director of Housing and Community Development to sign and execute a Subordination Agreement applicable to a \$232,484 loan made by the County to Transition House in 1992.

Alignment with Board Strategic Plan:

The recommendation(s) are primarily aligned with Goal No. 7. A Community that Fosters the Safety and Well-Being of Families and Children.

Executive Summary and Discussion:

Transition House is a nonprofit agency that provides shelter in a downtown Santa Barbara facility for families experiencing homelessness at 434 E. Ortega Street. The facility is in the 2nd District. Transition House has the opportunity to secure a one million dollar deferred interest loan from the State of California's Emergency Housing Assistance Program (EHAP.) Transition House will use the EHAP loan and other sources to pay for necessary renovations to the shelter.

The one million dollar loan from EHAP would be of great benefit to Transition House as they rehabilitate their shelter. These renovations are essential to Transition House in order to continue to provide temporary shelter and other valuable services to families in Santa Barbara. The EHAP loan has the potential to be forgiven and become a grant if Transition House continues to operate as a homeless shelter for seven years after the loan agreement is executed with the State of California.

One requirement of EHAP is that any loan it makes must not be in a junior position to any other government loans or loan or regulatory agreements. This is an issue for Transition House since the County loaned Transition House \$190,000 in 1992 and has a recorded deed of trust and regulatory agreement against the property. Your Board's approval of the recommendation will enable the Director of Housing and Community Development to execute a subordination agreement (Attachment A) with the State of California to subordinate the County's loan and loan agreement so as to fulfill the EHAP requirement that its loan not be in a junior position.

The County's loan accrued interest until January 17, 2004, and now has a balance of \$232,484. The loan stopped accruing interest in January of 2004 upon authorization from the Board of Supervisors. That authorization also allowed for the loan to be forgiven in the year 2024. All other terms of the loan still apply, and therefore if Transition House materially defaults on the loan by, for example, changing the use of the property, the loan will be due and payable.

Mandates and Service Levels:

The County's loan mandates that Transition House continue to serve as a transitional housing facility for homeless families for twenty years in order to keep interest from accruing and to eventually forgive the entire amount of the loan. The potential EHAP loan requires Transition House to function as a transitional housing facility similar to the County's requirement, only for a shorter, seven year period. Authorizing the Director of Housing and Community Development to execute the attached subordination agreement does not affect either of these mandates.

Fiscal and Facilities Impacts:

Because the subordination agreement puts the County loan in second position, it does increase the risk to the County that the County Loan will not repaid in the unlikely event that Transition House defaults on its obligations. If transition house defaults on its agreements, the State would be repaid before the County would. However, since the County Loan with Transition House already provides that it is to be forgiven after 20 years it is already assumed that the County will not be repaid. Further, the EHAP Loan will help Transition House continue to operate as a Shelter and not default on its agreements with the County.

Special Instructions:

None

Concurrence:

Auditor-Controller
County Counsel

Free recording in accordance
with California Government
Code Sections 6103 and 27383

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

State of California
Department of Housing and
Community Development
P. O. Box 952052
Sacramento, CA 94252-2052
Attn: EHAPCD Program
[03-EHAPCD-134](#)

SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE (the "Agreement") is dated as of _____, and is entered into by and among the County of Santa Barbara, a political subdivision of the State of California (the "Junior Lienholder"), Transition House, a California nonprofit public benefit Corporation (the "Borrower"), and the Department of Housing and Community Development, a public agency of the State of California (the "Senior Lender").

RECITALS

A. Borrower is the owner of the fee simple interest or a leasehold estate in that real property described in Exhibit A attached hereto and made a part hereof (the "Property"). The Borrower has acquired and is constructing / rehabilitating a 70 bed emergency shelter/transitional homeless housing development for otherwise homeless persons and families on the Property (the "Improvements"). The Property and the Improvements are sometimes referred to collectively as the "Development."

B. The Junior Lienholder has made a loan to the Borrower in the principal sum of One Hundred Ninety Thousand and 00/100s Dollars (\$ 190,000.00) (the "Junior Lienholder Loan"). The Junior Lienholder Loan is evidenced by a certain promissory note (the "Junior Lienholder Note"); is secured by a certain deed of trust (the Junior Lienholder Deed of Trust") recorded September 23, 1992, as Instrument No. 92-074975 in the Official Records of Santa Barbara County, California (the "Official Records") and has caused Borrower to execute certain document entitled Loan Agreement and Option to Purchase Between the County of Santa Barbara and Transition House (the "Junior Lienholder Loan Agreement") recorded September 23, 1992, as Instrument No. 92-074974 in the Official Records.

C. In order to finance the development of the Improvements, the Senior Lender has agreed to loan the Borrower a sum not to exceed One Million and 00/100s Dollars (\$1,000,000) (the "EHAPCD Loan"), subject to the terms and conditions of: (i) a regulatory agreement restricting the use and occupancy of the Development and the income derived therefrom which shall be dated as of even date herewith and recorded as an encumbrance on the Property in the Official Records (the "EHAPCD Regulatory Agreement"), (ii) a development agreement (the "EHAPCD Development Agreement") and (iii) other loan documents. The EHAPCD Loan will be evidenced by a promissory note (the "EHAPCD Note"), the repayment of which will be secured by, among other things, a deed of trust by Borrower as trustor, to Senior Lender as beneficiary recorded as an encumbrance on the Property in the Official Records (the "EHAPCD Deed of Trust") and by such other security as is identified in other loan documents. The EHAPCD Regulatory Agreement, the EHAPCD Development Agreement, the EHAPCD Note and the EHAPCD Deed of Trust are collectively referred to herein as the "Senior Lender Documents."

D. The Senior Lender is willing to make the EHAPCD Loan provided the EHAP Deed of Trust and the EHAPCD Regulatory Agreement are liens, claims or charges upon the Development prior and superior to the Junior Lienholder Deed of Trust and the Junior Lienholder Loan Agreement and provided that the Junior Lienholder specifically and unconditionally subordinates and subjects the Junior Lienholder Deed of Trust and the Junior Lienholder Loan Agreement to the liens, claims or charges of the EHAPCD Deed of Trust and the EHAPCD Regulatory Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce the Senior Lender to make its EHAPCD Loan, it is hereby declared, understood and agreed as follows:

1. The EHAPCD Regulatory Agreement and the EHAPCD Deed of Trust securing the EHAPCD Note in favor of the Senior Lender, and any and all renewals, modifications, extensions or advances thereunder or secured thereby (including interest thereon) shall unconditionally be and remain at all times liens, claims, or charges on the Development prior and superior to the Junior Lienholder Deed of Trust and the Junior Lienholder Loan Agreement, and to all rights and privileges of the Junior Lienholder thereunder; and the Junior Lienholder Deed of Trust and the Junior Lienholder Loan Agreement together with all rights and privileges of the Junior Lienholder

there under are hereby irrevocably and unconditionally subject and made subordinate to the liens, claims or charges of the EHAPCD Deed of Trust and the EHAPCD Regulatory Agreement.

2. This Agreement shall be the whole and only agreement with regard to the subordination of the Junior Lienholder Deed of Trust and the Junior Lienholder Loan Agreement, together with all rights and privileges of the Junior Lienholder thereunder, to the liens, claims or charges of the EHAPCD Deed of Trust and the EHAPCD Regulatory Agreement, and this Agreement shall supersede and cancel any prior agreements to subordinate the claims, liens or charges of, but only insofar as would affect the priority between the claims, liens or charges of the Junior Lienholder Deed of Trust and the Junior Lienholder Loan Agreement to the EHAPCD Deed of Trust and the EHAPCD Regulatory Agreement including, but not limited to, those provisions, if any, contained in the Junior Lienholder Deed of Trust which provide for the subordination of the lien or charge thereof to another lien or charge on the Property or the Improvements.

3. The Junior Lienholder declares, agrees and acknowledges that:

(a) The Junior Lienholder consents and approves (i) all provisions of the Senior Lender Documents, and (ii) all agreements among the Junior Lienholder, Borrower and Senior Lender for the disbursement of the proceeds of the EHAPCD Loan, including without limitation any loan escrow agreements which have been provided to the Junior Lienholder for review;

(b) The Senior Lender, in making disbursements of the EHAPCD Loan pursuant to the EHAPCD Note or any other agreement, is under no obligation or duty to, nor has the Senior Lender represented that it will, see to the application of such proceeds by the person or persons to whom the Senior Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part;

(c) That none of the execution, delivery or recordation of any of the EHAPCD Note, EHAPCD Deed of Trust, or EHAPCD Regulatory Agreement, or the performance of any provision, condition, covenant or other term thereof, will conflict with or result in a breach of the Junior Lienholder Deed of Trust or Junior Lienholder Note; and

(d) The Junior Lienholder intentionally and unconditionally waives, relinquishes, subjects and subordinates the claims, liens or charges upon the Development of the Junior Lienholder Deed of Trust and Junior Lienholder Loan Agreement, all present and future indebtedness and obligations secured thereby, in favor of the claims, liens or charges upon the Development of the EHAPCD Deed of Trust and the EHAPCD Regulatory Agreement, and understands that in reliance upon, and in consideration of, this waiver, relinquishment, subjection, and subordination, the EHAPCD Loan and advances thereof are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment, subjection and subordination.

4. The Senior Lender would not make the EHAPCD Loan without this Subordination Agreement.

5. This Agreement shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties.

6. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

7. In the event that any party to this Agreement brings an action to interpret or enforce its rights under this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in such action.

8. This Agreement may be signed by different parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this Agreement.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON (OR ENTITY) OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above and agree to be bound hereby:

JUNIOR LIENHOLDER:

County of Santa Barbara
a political subdivision of the
State of California

By: _____
Edward Moses

Its: County Department of Housing and
Community Development Director

Approved as to form:

STEPHEN SHANE STARK
COUNTY COUNSEL

By: _____
Deputy County Counsel

BORROWER:

Transition House.
a California nonprofit public benefit
corporation

By: _____
Kathleen Baushke

Its: Executive Director

SENIOR LENDER:
**The Department of Housing and
Community Development**, a public
agency of the State of California

By: _____
Carlos Patterson, Manager
Homeless Programs

APPROVED AS TO FORM:

BOB GEIS
AUDITOR CONTROLLER

By: _____
Senior Financial Analyst

Expenditure Accounting Information

Fund: 0066 Dept: 065
Line Item: 7650 Program: 6001

[Signatures must be acknowledged]

EXHIBIT A

Legal Description of the Property

Assessor's Parcel No.: 031-160-03

IN WITNESS THEREOF, THE PARTIES HERETO HAVE EXECUTED THIS SUBORDINATION AGREEMENT.

STATE OF CALIFORNIA)

County of _____)ss.

On _____, before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) who is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

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STATE OF CALIFORNIA)

County of _____)ss.

On _____, before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) who is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

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STATE OF CALIFORNIA)

County of _____)ss.

On _____, before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) who is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)