



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
123 E. Anapamu Street, 2nd Floor
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Community Services
Department No.: 057
For Agenda Of:
Placement: Administrative
Estimated Tme:
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department George Chapjian, Community Services Director (805) 568-2485
Director(s) *gc*
Contact Info: Dinah Lockhart, Community Services Deputy Director (805) 568-3523
SUBJECT: County Homebuyer Assistance Program Loan No. 00-05, Proposed Amendment (Supervisorial District 4)

County Counsel Concurrence

As to form: Yes

Planning and Development:

As to form: N/A

Recommended Actions:

That the Board of Supervisors:

- A. Approve and authorize the Chair to execute an amendment (Exhibit A) to the Promissory Note for the "shared equity" County HAP Loan No. 00-05, which will allow the home owner to borrow an amount of up to \$203,000 against the owner's share of equity only.
- B. Approve and authorize the Chair to execute a Subordination Agreement (Exhibit B) that subordinates the County's existing Deed of Trust securing HAP Loan No. 00-05 to a new deed of trust securing a loan in the amount of up to \$203,000.
- C. Determine that the recommended actions are not the approval of a project that is subject to environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378(b)(4), finding that the project is a creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment, and direct staff to file a Notice of Exemption (Exhibit E).

Auditor-Controller Concurrence

As to form: N/A

Summary Text:

The County’s Homebuyer Assistance Program originated a silent second mortgage for the subject family in the amount of \$30,000 on October 25, 2000. The intent of the HAP program was to assist first time homebuyers earning up to 80% of the Area Median Income in purchasing a principal residence in the County of Santa Barbara.

The Promissory Note for the HAP Loan No. 00-05 (Exhibit C) (“HAP Note”) is secured by the County of Santa Barbara Homebuyer Assistance Program Subordinate Deed of Trust (Exhibit D) (“HAP Deed of Trust”). The HAP Note provides that, in the event of a Transfer or Refinance of the mortgage in first lien position, the owner will pay to the County a percentage of the property’s equity (“County Equity Share”). The County Equity Share percentage is calculated as follows:

$$\text{(County capital contribution)} / (\text{County capital contribution} + \text{Owner capital contribution})$$

The owners have requested that the County subordinate our HAP Deed of Trust to a new mortgage, allowing the owners to pull cash out of their portion of the home equity and finalize their divorce.

Background:

When the owner approached the County with a request to borrow against the property, staff evaluated the request and proposed several options, including pre-payment of the County Equity Share. The owner also had the option of taking out a second mortgage without requesting that the County subordinate to the new loan. Due to the inability to qualify for a second mortgage with a lender who would agree to be in a junior position to the County’s HAP Deed of Trust, the owner has elected to pursue a new first mortgage in the amount of \$203,000 to pull cash out of their equity and settle divorce proceedings. This option requires the County to subordinate its HAP Deed of Trust to a deed of trust securing this new first mortgage of \$203,000 placing the new loan in first lien position.

HCD estimates that if this payment were due now the repayment amount would be between \$59,250 and \$61,500. The current fair market value of the home ranges between \$395,000 and \$410,000 and the owner’s equity share ranges between \$335,750 and \$348,500. However, no amount is due at this time because the owner does not propose to Transfer and does not propose to Refinance. The current owners of this subject property are seeking to take out a new mortgage to settle their divorce and obtain an affordable mortgage payment so that the husband may remain in the home and raise their children. This new mortgage will require that the County subordinate our existing HAP Deed of Trust.

HCD proposes amending the HAP Note to ensure that the new mortgage is only being taken out against the owner’s share of equity in the home. This will ensure that payments on the new loan will not dilute the County Equity Share in the event that a repayment becomes due at a later date.

Impacts:

Budgeted: Yes

Special Instructions:

Return a copy of the Minute Order to Andrew Kish, HCD, Property Management Program.

Attachments:

- Attachment A – Amendment to the Promissory Note for HAP Loan No. 00-05
- Attachment B – Subordination Agreement
- Attachment C – Promissory Note for HAP Loan No. 00-05
- Attachment D – HAP Loan Deed of Trust
- Attachment E – CEQA Exemption

Authored By:

Andrew Kish, Housing Program Specialist II
Margo Wagner, Senior Housing Program Specialist

new loan and any outstanding amounts owed on this new loan will not affect calculations of the County Equity Share if and when a payment of the County Equity Share becomes due; and

WHEREAS, the County and Borrower do not intend to materially change the terms and conditions of the Note;

WHEREAS, the County and Borrower intend only for this First Amendment to preserve the original formula for calculating the County Equity Share as set forth in the Note at the time of its making; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, COUNTY and BORROWER hereby agree to amend the Agreement as follows:

1. **Section I.(C) Security** shall be deleted in its entirety and replaced with the following:

(C) Security.

This Note is secured by a deed of trust on the Property dated the same date as this Note (the "Subordinate Deed of Trust").

The indebtedness evidenced by this Note was subordinate to the indebtedness evidenced by a note payable to a senior lender (the "First Note"), which note was secured by a first deed of trust on the Property (the "First Deed of Trust"). Prior to the execution of the First Amendment, the First Note has been repaid in full and the First Deed of Trust no longer encumbers the Property.

The Borrower has executed a new note payable to a lender (the "New Note"), which note is secured by a first deed of trust on the Property (the "New Deed of Trust"). County has agreed to subordinate its Subordinate Deed of Trust to the New Deed of Trust.

2. **Section I.(D) Use of Funds** shall be amended by adding the following:

The amount of the New Note is \$203,000

3. **Section II. DEFINITIONS** shall be amended by adding the following:

"New Note" - Section I (C)

"New Deed of Trust" - Section I (C)

4. **Section III. EQUITY SHARING** shall be amended by deleting the "Equity" and "My Capital Contribution" paragraphs in their entirety and replacing them with the following:

"Equity" is defined as the dollar amount remaining after subtracting the following from the sales price at the time the Property is first sold after the date of this Note or, if there is no sale, the Fair Market Value of the Property (as defined in Section V(F) of this Note):

- (1) All of my actual transfer costs, including any costs of brokers' commissions, transfer taxes, escrow fees, title costs and fees, recording costs, and County-

approved appraisal, fees paid by me in connection with my sale of the Property.

For the purpose of calculating the "Equity" dollar amount, any amount owed on any loans senior to this Loan, including the New Note, shall not be subtracted from the sales price or Fair Market Value.

"My Capital Contribution" to the Property is the total of My Downpayment, my payments of principal on the First Note, and the Value of Capital Improvements (as defined in Section V(G) of this Note) at the time of Transfer or Refinance that I have made to the Property (provided such Improvements were documented at the time they were made to the satisfaction of the County in accordance with the procedure outlined in Section V(H) of this Note, and I have written to the County at the time of Transfer or Refinance requesting that a determination be made of the Value of Capital Improvements). For the purpose of calculating "My Capital Contribution" to the Property, my payments of principal on the New Note shall not be included.

5. **Section V.(E) Refinance** shall be deleted in its entirety and replaced with the following:

"Refinance" shall mean paying off the New Note secured by the New Deed of Trust prior to its maturity date with funds secured from a new loan, provided, however, that "refinance" for purposes of repayment of this Note shall not include any of the following: (i) I secure the new loan only to lower the interest rate on the New Note secured by the First Deed of Trust and I am not securing the new loan for the purpose of borrowing additional funds; or (ii) the additional funds are secured entirely to pay for Non-Luxury Capital Improvements approved, in advance, by County. "Non-Luxury Capital Improvements" are defined as substantial improvements, such as room additions, which increase the habitable space of the home.

I understand that if I Refinance the New Note secured by the New Deed of Trust, I am required to repay to the County the entire amount I owe under the terms of this Note as set forth herein, including the County's Equity Share.

When I Refinance the New Note for any reason, I will be responsible for any and all refinance costs (including the payment of all loan costs, fees and points). In addition, if I refinance without paying off this Note, I will be responsible for paying in full any and all costs of escrow and for the cost of the appraisal required to determine the Fair Market Value, and these costs may **not** be added to the new loan amount.

6. It is expressly understood that in all other respects, the terms and conditions of the original Promissory Note Secured by a Subordinate Deed of Trust and Borrower's Agreement to the Condition of this Loan, dated October 25, 2000, shall remain in full force and effect.
7. In the event there is any conflict between the terms and conditions of this First Amendment and the Note, this First Amendment shall prevail.
8. Each party has carefully read each provision of this First Amendment, has had the opportunity to consult with counsel, knows and understands each of the provisions of this First Amendment and its effect, and freely signs and executes this First Amendment without any compulsion, coercion or undue influence whatsoever.

IN WITNESS WHEREOF, Borrower and County have executed this First Amendment to be effective as of the date executed by the County.

APPROVED AS TO FORM:

Michael Ghizzoni
COUNTY COUNSEL

By: SG/21
Deputy County Counsel

COUNTY:

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

By: _____
Joann Hartman, Chair
Board of Supervisors

BORROWERS:


Dale L. Richards

Aniko Richards

IN WITNESS WHEREOF, Borrower and County have executed this First Amendment to be effective as of the date executed by the County.

APPROVED AS TO FORM:

Michael Ghizzoni
COUNTY COUNSEL

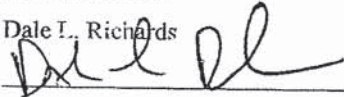
By: 
Deputy County Counsel

COUNTY:

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

By: _____
Joann Hartman, Chair
Board of Supervisors

BORROWERS:

Dale L. Richards


Aniko Richards

IN WITNESS WHEREOF, Borrower and County have executed this First Amendment to be effective as of the date executed by the County.

APPROVED AS TO FORM:

COUNTY:

Michael Ghizzoni
COUNTY COUNSEL

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

By: _____
Deputy County Counsel

By: _____
Joann Hartman, Chair
Board of Supervisors

BORROWERS:

Dale L. Richards

Aniko Richards 
