

**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:** 4/10/03  
**Department Name:** Housing and Community Dev.  
**Department No.:** 990  
**Agenda Date:** 4/22/03  
**Placement:** Administrative  
**Estimate Time:**  
**Continued Item:** NO  
**If Yes, date from:**

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**TO:** Board of Supervisors

**FROM:** Edward Moses, Director  
Housing and Community Development

**STAFF CONTACT:** Patricia Gabel  
#3522

**SUBJECT:** Approval of Subordination Agreement for Sandpiper Apartments, Goleta

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**Recommendation(s):**

That the Board of Supervisors:

- A. Approve the subordination of the Regulatory Agreement for the Sandpiper Apartments to a Loan Agreement, Promissory Note and Deed of Trust securing a Loan from Mid – State Bank and Trust to the Housing Authority of the County of Santa Barbara (Housing Authority) in order for the Housing Authority to refinance the property, and
- C. Authorize the Housing and Community Development Director to execute the Subordination Agreement with the Housing Authority for the benefit of Mid – State Bank and Trust.

**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:**

In November 2002 the Housing Authority of the County of Santa Barbara (Housing Authority) received a \$600,000 loan of HOME and countywide local funds to acquire a 68 – unit apartment complex of 20 efficiencies (studios) and 48 one – bedroom flats and townhomes at 370 Mathilda Street in the Ellwood section of Goleta. The Housing Authority is now refinancing the property in order to secure a more favorable financing rate and is repaying the County loan with \$42,115.07 in interest. The \$642,115.07 repayment will be made into the County HOME account and will be

available to fund other affordable housing projects. 10% of the repayment is available for program administration by HOME regulation.

County Counsel reviewed the Subordination Agreement and found that, like all subordination agreements, it provides that the County Regulatory Agreement becomes null and void if there is a foreclosure on the property. Counsel affirmed that there were no prohibitions to this transaction in the HOME guidelines. HCD staff is confident that the strength of the project cash flow and property management principals followed by the Housing Authority would preclude a foreclosure.

*The original document is to be signed in escrow at First American Title Company. The attached is the final and complete document for your review.*

**Mandates and Service Levels:**

No changes to programs or service levels.

**Fiscal and Facilities Impacts:**

None

**Special Instructions:**

None

**Concurrence:**

County Counsel

RECORDING REQUESTED BY ) AND WHEN RECORDED MAIL TO: ) ) MID-STATE BANK & TRUST ) P.O. Box 6001 ) Arroyo Grande, CA 93421 ) ) Attn: Dan Boughey ) Vice President )		SPACE FOR RECORDER'S USE
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**SUBORDINATION AGREEMENT**

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

**THIS SUBORDINATION AGREEMENT** ("Subordination Agreement") is made as of April 1, 2003 by and among HOUSING AUTHORITY OF THE COUNTY OF SANTA BARBARA, a public body corporate and politic, owner of the interest in real property hereinafter described ("Owner"), the County OF SANTA BARBARA, a political subdivision of the State of California (the "County") for the benefit of MID-STATE BANK & TRUST (the "Bank").

**FACTUAL BACKGROUND**

A. As a condition to a loan of funds by the County to the Owner from the HOME Investment Partnership Program (the "HOME Loan") to develop a multifamily rental housing project known as the Sandpiper Apartments (the "Property", more fully described in Exhibit "A" attached hereto), the Owner and the County entered into a Regulatory Agreement and Declaration of Restrictive Covenants dated as of November 21, 2000 (the "Regulatory Agreement") that was recorded on December 19, 2000 as Instrument No. 2000-0080081 in the Official Records of the County of Santa Barbara (the "Official Records"). The Regulatory Agreement encumbers the Property with certain rental restrictions.

B. Pursuant to that certain Loan Agreement dated as of April 1, 2003, (the "Loan Agreement") the Bank is making a loan in the principal amount of \$5,360,070.00 to Owner to refinance the Property, including paying off the HOME Loan. Owner's obligation to repay the indebtedness incurred by Owner under the Loan Agreement (the "Loan") is evidenced by a promissory note made by Owner to the order of the Bank dated April 23, 2003 in the face amount of \$5,360,070.00 (the "Note"). The obligations of Owner under the Loan Agreement and the Note will be secured by a deed of trust dated as of April 1, 2003 executed by Owner as trustor, naming MSB Properties, Inc. as trustee and the Bank as beneficiary, that is to be

recorded substantially concurrently herewith (the "Deed of Trust"). The Loan Agreement, the Note and the Deed of Trust are collectively referred to herein as the "Loan Documents".

C. It is a condition to Bank's loan of the funds to the Bank to make the Loan that the Deed of Trust unconditionally be and remain at all times liens, claims and charges upon the Property prior and superior to the lien and encumbrance of the Regulatory Agreement.

D. It is to the mutual benefit of the parties that the Bank makes the Loan and the County is willing to have the Deed of Trust constitute a lien, claim and charge upon the Property unconditionally prior and superior to the lien and encumbrance of the Regulatory Agreement.

## **AGREEMENT**

1. The Deed of Trust and any and all renewals, modifications, extensions or advances thereunder or secured thereby (including interest thereon), is unconditionally and will remain at all times liens, claims or charges on the Property prior and superior to the Regulatory Agreement.

2. Bank would not make its loan to the Bank and the Bank would not make the Loan without this Subordination Agreement.

3. The County declares, acknowledges and agrees that:

a. The County consents to all provisions of the Loan Documents;

b. In making or approving disbursements under the Loan Agreement, Bank is under no obligation or duty to, nor has Bank represented that it will, see to the application of the proceeds of the sale of the Loan or any other amounts disbursed pursuant to the Loan Agreement; and

c. The County intentionally and unconditionally waives, relinquishes, subjects and subordinates the lien and encumbrance of the Regulatory Agreement in favor of the liens, claims and charges upon the Property of the Deed of Trust and understands that in reliance upon, and in consideration of, this waiver, relinquishment, subjection and subordination, specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into that would not be made or entered into but for Bank's reliance upon this waiver, relinquishment, subjection and subordination.

4. Bank and the County agree to give to each other copies of all notices of Events of Default under (and as defined in) the Loan Documents and the Regulatory Agreement.

5. This Subordination Agreement is the whole and only agreement with regard to the subordination of the Regulatory Agreement to the Deed of Trust. This Subordination Agreement is binding on and inures to the benefit of the legal representatives, heirs, successors and assigns of the parties.

6. If any party to this Subordination Agreement brings an action to interpret or enforce its rights under this Subordination Agreement, the prevailing party will be entitled to recover its costs and reasonable attorneys' fees as awarded in the action.

7. All notices given under this Subordination Agreement must be in writing and will be served effectively upon delivery, or if mailed, upon the first to occur of receipt or the expiration of forty-eight (48) hours after deposit in certified United States mail, postage prepaid, sent to the party at its address appearing below. Those addresses may be changed by any party by notice to all other parties.

8. This Subordination Agreement is governed by the laws of the State of California, without regard to the choice of law rules of that State.

9. This Subordination Agreement may be executed in counterparts, and all counterparts constitute but one and the same document.

**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY INTEREST TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR PURPOSES OTHER THAN IMPROVEMENT OF THE PROPERTY.**

**COUNTY:**

COUNTY OF SANTA BARBARA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: County of Santa Barbara  
105 East Anapamu Street, Room 105  
Santa Barbara, CA 93101  
Attn: Affordable Housing Manager

**OWNER:**

HOUSING AUTHORITY OF THE COUNTY OF SANTA BARBARA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address:  
Housing Authority of the County of Santa Barbara  
815 West Ocean Avenue  
Lompoc, CA 93436  
Attention: \_\_\_\_\_

**BANK:**

MID-STATE BANK & TRUST

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address:  
  
P.O. Box 6001  
Arroyo Grande CA 93421  
Attention: Dan Boughey, Vice President

Exhibit A  
Property Legal Description

The land referred to herein is situated in the City of Goleta, County of Santa Barbara, State of California, and is described as follows:

