



Memorandum

TO: CITY OF SAN JOSE FINANCING
AUTHORITY BOARD

FROM: Julia H. Cooper
Leslye Corsiglia

SUBJECT: SEE BELOW

DATE: November 27, 2012

Approved

Date

12/6/12

COUNCIL DISTRICT: 3

**SUBJECT: CONSENT OF THE SAN JOSE FINANCING AUTHORITY TO THE
RECORDING OF SUBORDINATE LEASEHOLD DEEDS OF TRUST
AGAINST THE GROUND LEASE FOR THE FOURTH STREET
APARTMENTS**

RECOMMENDATION

It is recommended that the San José Financing Authority Board adopt a resolution authorizing:

- a) The recording of a subordinate leasehold deed of trust for an Federal Home Loan Bank Affordable Housing Program ("AHP") loan in the amount of \$1,000,000 against the Ground Lease between the City of San José Financing Authority ("Authority") and Fourth Street Apartments, L.P. (the "Borrower") for the Fourth Street Apartments located at 1460 North Fourth Street;
- b) The recording of a subordinate leasehold deed of trust for a Mental Health Services Act ("MHSA") loan in the amount of \$661,621 and a \$570,000 operating subsidy grant against the Ground Lease between the Authority and the Borrower for the Fourth Street Apartments;
- c) The recording of a subordinate leasehold deed of trust for a Tax Credit Assistance ("ARRA/TCAP") loan in the amount of \$8,789,846 against the Ground Lease between the Authority and the Borrower for the Fourth Street Apartments;
- d) The Executive Director of the Authority or designee to negotiate and execute an amendment to the Ground Lease to add the new subordinate loans and lenders and to provide additional notice and cure provisions for the California Housing Finance Agency ("CalHFA"), in connection with MHSA loan; and
- e) The Executive Director of the Authority or designee to execute all documents pertaining to these approvals.

OUTCOME

Approval of the recommended actions will allow the previously approved loan for the 100-unit affordable housing project known as Fourth Street Apartments (the "Project") to be converted to permanent loan status, ensuring that the Project is fully financed for the term of the development.

BACKGROUND

On March 20, 2007, the Council of the City of San José ("City") approved a construction funding commitment of up to \$9,875,000 to First Community Housing ("FCH"), or its designated affiliate, for the development of the Fourth Street Apartments located at 1460 North Fourth Street in the City of San José. The Project consists of 100 income-restricted units in a nine-story steel-frame building. Thirty-five (35) units in the Project are affordable to extremely low income households ("ELI") at or below 25% of the Area Median Income ("AMI"), 40 units target very low income households ("VLI") at or below 50% of AMI, and 25 units target low income households ("LI") at or below 60% of AMI. Among the units listed, 35 will be set aside for developmentally disabled households.

On April 10, 2008, the Director of Housing approved a \$100,000 predevelopment loan to FCH to partially fund pre-construction development costs. On June 24, 2008, the City Council approved a \$400,000 increase in the loan to a total of \$500,000. This predevelopment loan amount is part of the total City commitment amount of \$9,875,000.

On May 12, 2009, the City Council approved the early release of up to \$4,000,000 of the previously approved construction loan commitment of up to \$9,875,000 to FCH. The \$4,000,000 was used to repay an Opportunity Fund land acquisition loan and accrued interest totaling \$1.5 million, to repay a Housing Trust Fund predevelopment loan of \$500,000, to repay the Sobrato Foundation's predevelopment loan of \$500,000, and to reimburse FCH in an amount up to \$1.5 million in predevelopment costs based on submission of invoices.

On August 11, 2009, the City Council approved actions bringing the City's total construction/permanent funding up to \$13,894,579. On November 2, 2010, the City Council approved additional funding up to \$8,789,846 in funds authorized by the Federal American Recovery and Reinvestment Act of 2009 ("ARRA") and administered by the California Tax Credit Allocation Committee ("CTCAC"). Approval of this action was needed in the event the State was unable to meet its prior commitment of \$8,789,846. The ARRA funding did not change the City's existing commitment amount to the Project.

The total City/Authority commitment amount for the Project is \$16,084,579, which includes the City's construction/permanent loan of \$13,894,579 and contributed Authority leasehold valued at \$2,190,000, which will be owned by the Authority and leased to the Project for up to 75 years. The Project has completed construction and is fully leased. Construction financing is expected to be converted to permanent financing status in January 2013.

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The City was aware that FCH had also applied for a Federal Home Loan Bank Affordable Housing Program ("AHP") loan in connection with the Project. Further, the City encouraged FCH to seek the Mental Health Services Act ("MHSA") loan and operating subsidy grant in order to provide funding for the Project's special needs units. FCH was awarded subsequently awarded both of these loans for the Project.

ANALYSIS

Pursuant to the terms of the senior loan with the Borrower, the senior construction loan must convert to permanent status by January 15, 2013. If conversion does not occur, the Project is in technical default on its senior loan. The City's construction loan must convert to a permanent loan at the same time as the senior construction loan.

It was previously anticipated that the City would consent to a subordinate leasehold deeds of trust for the ARRA/TCAP, AHP and MHSA loans and amend the lease accordingly if these loans were obtained. However, this authority was not specifically granted by the Authority Board's previous actions. Additionally, CalHFA has requested certain amendments to the Ground Lease to clarify its notice and cure rights. Staff recommends that the Executive Director of the Authority be authorized to execute an amendment with the requested notice and cure rights requested by CalHFA given the importance of the MHSA loan and operating subsidy grant in funding the Project's special needs units.

To facilitate the conversion of the senior loan, staff is requesting that the Authority Board approve the recording of a subordinate leasehold deeds of trust in the amount of \$1,000,000 for AHP and \$1,231,621 from MHSA against the Borrower's interest in the Ground Lease. There is no additional risk to the City as this encumbrance is subordinate to the City permanent loan.

EVALUATION AND FOLLOW-UP

The project is complete and fully occupied. No additional action is anticipated.

PUBLIC OUTREACH

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**

- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This request does not meet any of the above criteria. This memorandum will be posted on the City's website for the December 18, 2012 City Council agenda.

COORDINATION

This report has been prepared by the Housing Department in coordination with the Finance Department and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This action is consistent with the City's *2007-2012 Five-Year Housing Investment Plan*, adopted by City Council on June 12, 2007, to increase the supply of affordable housing, and with the City's *Consolidated Plan 2010-2015* to provide housing units for very low- and extremely low-income households.

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CEQA

Addendum to Final EIR for the North San José Area Development Policy, Resolution No. 72768, File No. PDC06-022.

/s/
JULIA H. COOPER
Acting Director of Finance

/s/
LESLYE CORSIGLIA
Director of Housing

For questions, please contact Leslye Corsiglia, Housing Director, at 408-535-3851.

Attachment

Attachment 1

Site Map

1470 North Fourth Street

