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Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Leslye Krutko
Scott P. Johnson

SUBJECT: SEE BELOW

DATE: May 28, 2010

Approved

Date

6/8/10

INFORMATION

SUBJECT: REPORT ON ACTIVITIES UNDERTAKEN BY THE DIRECTOR OF HOUSING AND THE DIRECTOR OF FINANCE UNDER THE CITY COUNCIL'S DELEGATION OF AUTHORITY FOR THE PERIOD OF OCTOBER 1, 2009 THROUGH DECEMBER 31, 2009

EXECUTIVE SUMMARY

This Memorandum details actions taken under the City Council's delegation of authority to the Director of Housing and the Director of Finance for the second quarter of Fiscal Year 2009-2010. During this quarter, the Director of Housing approved: Modifications to six (6) existing loans; business terms for three (3) loans; ninety-five (95) new rehabilitation loans and grants totaling \$1,566,794; a Housing Trust Fund Grant in the amount of \$41,000; eighty-eight (88) and, homebuyer loans totaling \$8,685,894. There were no Predevelopment Loans to report, and there were no TEFRA hearings held this quarter.

BACKGROUND

On September 4, 1990, the City Council adopted Ordinance No. 23589 which delegated to the Director of Housing certain specified authorities in the administration of the City's comprehensive affordable housing program (the "Delegation of Authority" or "DOA"). On May 23, 2000, the Delegation of Authority was amended by Ordinance No. 26127 to clarify certain sections and add several other provisions. On June 25, 2002, the Delegation of Authority was further amended by Ordinance No. 26657 to add several provisions delegating additional authority to the Director of Housing, the Director of Finance, and the City Manager. Subsequently, the City Manager delegated to the Director of Housing the contract authority granted to the City Manager. Effective July 26, 2007, the Delegation of Authority was further amended by Ordinance No. 28067 to modify certain provisions in order to streamline the Housing Department's process of making and adjusting loans and grants.

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The Delegation of Authority is codified in Chapter 5.06 of the Municipal Code. This Memorandum reports on activities undertaken pursuant to the Administration's delegated authority for the period of October 1, 2009 through December 31, 2009.

ANALYSIS

The Delegation of Authority ordinance authorizes the Director of Housing: to develop and implement additional guidelines for housing programs; to adjust terms on housing loans and grants; to change the funding sources of a loan; to convert loans to grants; to loan or to grant Housing and Homeless funds, Predevelopment funds, and Housing Rehabilitation Program funds; to negotiate and to execute grant agreements necessary to implement Council-approved programs adopted in the Annual Action Plan of the Consolidated Plan; to provide management for, and/or dispose of, properties acquired through direct purchase, foreclosure or deed-in-lieu proceedings; to formalize the City Council's policies and procedures regarding housing loan defaults; to apply for federal or State funding; to determine, within defined parameters, various terms and conditions of loans and grants previously approved by the City Council; to make adjustments, within defined parameters, to loans and grants previously approved by the City Council; and to make other technical changes.

Further, the DOA Ordinance delegates jointly to the Director of Housing and Director of Finance certain authority related to the City's issuance of tax-exempt, private activity bonds to finance the development of affordable housing projects. The DOA Ordinance also delegates to the Director of Finance the authority to hold TEFRA hearings on the City's proposed issuance of tax-exempt bonds to finance affordable housing projects.

ACTIONS TAKEN BY THE DIRECTOR OF HOUSING AND THE DIRECTOR OF FINANCE

Under the parameters of the Delegation of Authority, the Director of Housing and the Director of Finance have taken the following actions during the period of October 1, 2009 through December 31, 2009.

Modifications to Council-approved Loan Terms & Conditions

Belovida at Newbury Park, L.P. – District: 3 – SNI: N/A

The subject of these actions is a City Council-approved funding commitment for up to \$20,491,607, and a \$3,123,330 conditional loan to backstop State Infill Infrastructure Grant funds, for the development of the 185-unit Belovida at Newbury Park, an affordable senior housing project to be located at King Road and Dobbin Drive.

On March 18, 2008, the City Council approved a funding commitment for up to \$17,925,000 to the designated affiliate of CORE Affordable Housing for the Belovida project. On November 17, 2009, City Council adopted a resolution approving the issuance of up to \$26,200,000 in tax-exempt multifamily housing revenue bonds, a loan of the bond proceeds to the borrower, and a

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change in the project's income restrictions. On December 9, 2009, the City Council adopted a resolution approving a reclassification of \$500,000 of the previously approved funding commitment to a predevelopment loan.

Because the upper-tier investor could not be admitted to the borrowing partnership in time to meet CDLAC's issuance deadline of December 7, 2009, the City opted to wait to close the bonds after the investor is admitted, forcing a return of the 2009 bond allocation and a reapplication to CDLAC for a 2010 allocation. [Note: CDLAC approved this request on January 27, 2010, which allows the bonds to close as late as May 2010.]

On December 22, 2009, the Directors of Housing and Finance approved Staff's recommendation to reapply to the California Debt Limit Allocation Committee ("CDLAC") for a 2010 tax-exempt bond allocation in the amount of \$23,590,000 for the Belovida at Newbury Park project under the Delegation of Authority.

Almaden Lake Apartments - Approval to Subordinate the City Loan to a New Senior Loan and Amend the Existing City Loan Terms, District: 10 – SNI: N/A

On January 27, 1995, the City made a \$6,339,260 permanent loan ("City Loan") to Winfield Hill Associates, a California limited partnership, an entity formed by BRIDGE Housing Corporation, for the construction and development of the 144-unit Almaden Lake Apartments located at 978 Almaden Lake Drive, serving 142 very low- and 2 moderate-income households. In addition to the City financing and the tax credit financing, Citibank provided a permanent loan in the principal amount of \$4,000,000 ("Senior Loan"), which, at the time of this action, had an estimated balance of \$3,000,000.

On April 2009, Borrower requested the Housing Department work with it to refinance the Senior Loan, the proceeds of which would help to make water intrusion repairs on the property. The initial scope of the repair work was limited to the building's elevated walkways with an initial cost of \$1,013,000, which was funded by the replacement reserves and the operating reserves of the property. Borrower's and the contractor's best estimate of the complete scope of work is approximately \$3,042,000.

On October 5, 2009, the Director of Housing approved the following:

1. Subordinate the City Loan to a new senior loan from PNC Multifamily Mortgage ("PNC") in the amount of up to \$6,075,000.
2. Amend the Cash Flow Payment to the City to 60%, from 50%.
3. Extend the Affordability Restrictions by 7 years, from 55 to 62 years.

The new senior loan of \$6,075,000, enhanced by Fannie Mae, matures in 2039. The City Loan maturity date is January 25, 2025 – 14 years earlier than the senior loan. The new repayment schedule and the increased new senior loan do not add risk to the City.

In consideration for the subordination, the City extended the affordability restrictions by 7 years from 55 to 62 years. Borrower also agreed to increase the net cash flow to the City from 50% to

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60%, and to pay the \$30,000 annual partnership management fees—which have had priority payment over the City’s share of net cash flow—from Borrower’s share of the cash flow under the revised terms.

Approval to Accept a Reduced Amount of Loan Payoff and to Write Off a First-Time Homebuyer Loan due to Short Sale:

On October 17, 2007, the owner of the property at of 797 South 22nd Street (“Borrower”) received a \$257,000 deferred, second-lien priority note from the developer as required by the City’s Inclusionary Homebuyer Program. In addition to the developer discount note, KB Home Loans provided a \$417,000 first-lien priority loan with monthly interest only payments (the “Senior Loan”).

In December 2008, Borrower indicated that she was going to be laid off by her employer and was planning to short sell the property as a last remedy to avoid foreclosure by the Senior Lender. The short sale was approved in August 2009 by the Senior Lender, who at the same time requested the City accept a loan payoff of \$13,000.

The Senior Lender approved a reduced loan payoff amount of \$422,096. Because the Senior Lender is determined to proceed with foreclosure, the City had no choice but to accept the \$13,000 settlement offer. In the event of foreclosure, the City would instead lose the full \$257,000.

Staff determined that the remaining balance of the funds owed the City are uncollectible and accepted \$13,000 as payment in full. The City’s Deed of Trust and Affordability Restriction would be released after closing of the short sale. On October 20, 2009, the Director of housing approved a reduced amount of loan payoff and write-off of a total amount of \$234,836.50 on the First-Time Homebuyer loan under the Delegation of Authority.

Assumption and Modification of a Deferred Mobile Home Rehabilitation Loan:

On April 18, 1991, the City of San José made a 3.0% deferred payment, Mobile Home Rehabilitation Loan to the owner of 1520 East Capitol Expressway #2 (“Borrower”) in the amount of \$6,396 for the rehabilitation of their mobilehome. The loan is not subject to affordability restrictions. With the passing of both Borrowers, the property transferred to Borrowers’ son. The son’s financial information was collected for analysis in a deferment review and it was determined to be eligible for the City’s programs. A deferment continuation was approved on November 3, 2005, however Staff did not process an assumption as needed at that time.

On October 21, 2009, the Director of Housing approved the following:

- 1) Assumption of Mobilehome Rehabilitation Loan #16116 MHR to the original borrowers’ son in the principal amount of \$6,396.00 plus accrued and unpaid interest in the amount of \$4,450.04 for a total of \$10,846.04.

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- 2) Extension of the deferred payment status of the loan for an additional five years, with a re-review of the Borrower's financials at the time to determine deferral continuation eligibility.
- 3) Extension of the maturity date from April 18, 2010 to May 1, 2015.
- 4) Capitalization of all accrued and unpaid interest into the principal balance of the loan through November 1, 2009.
- 5) A change the interest rate calculation from 3.0% per annum to 0.00% interest beginning November 1, 2009.

The current property owner is a 71-year old single senior on a fixed income comprised solely of Social Security Benefits plus a small pension. The collateral for the City's loan is Borrower's Newport Mobilehome. The modification to the loan will protect the City's loan and allow the borrower to continue residing in his home.

Modification and Amendment of the Housing Rehabilitation Loan #18048:

On November 10, 1993, the City of San José made a 3.0% deferred loan in the amount of \$27,430 to the owner of 175 South King Road ("Borrower") for the rehabilitation of her single-family residence. The promissory note was written for a term of 15 years that became due and payable on December 1, 2008.

The owner of the subject is a 90-year old senior living on a limited, monthly, fixed income of \$993.00. City Staff received Borrower's updated financial information, have performed an analysis, and found that Borrower continues to qualify for City's deferred payment, Housing Rehabilitation Loan Program.

On November 16, 2009, the Director of Housing approved the following modifications to the Housing Rehabilitation Loan #18048 in order to cure the minor monetary default:

- 1) Extend the maturity date from December 1, 2008 to December 1, 2018.
- 2) Capitalize all accrued and unpaid interest into the principal balance of the loan through November 1, 2009.
- 3) Change the interest rate calculation from 3.00% compounded annually to 3.00% simple interest.
- 4) Accept partial loan payments on a matured loan.

2112 Monterey Road, L.P. - Monterey Breeze Restaurant - Relocation Settlement Agreement with Len Thi Cao:

On January 27 2009, the City Council authorized the Director of Housing to negotiate and execute a forbearance agreement with EHC and its creditors. Part of the actions approved by the City Council included adoption of a relocation plan and authorization for the Director of Housing to spend up to \$2,100,000 for the relocation of Marham Terrace Tenants.

Relocation of the SRO tenants proceeded on schedule under budget. The restaurant relocation also proceeded under schedule. The City paid approximately \$78,000 to the restaurant owners for their personal equipment that could not be moved, and architectural drawings for the new restaurant location.

On October 20, 2009, the Director of Housing approved the execution of the Relocation Settlement Agreement with Len Thi Cao—Owner of the Monterey Breeze Restaurant in the amount of \$375,000, of which \$77,946 had previously been paid, as total and final relocation payment of the restaurant relocation associated with the Markham Terrace relocation, as approved by City Council on January 27, 2009. The settlement figure was based on two competitive bids for the construction. The settlement figure is between the high and low cost estimates as determined by the relocation consultant, Associated Right-of Way (ARWS).

By entering into a settlement agreement, the City minimized its risk, and eliminated any future administrative burden of having to oversee and process construction cost reimbursements.

Loans/Grants Terms and Conditions

Belovida at Newbury Park, L.P. – District: 3 – SNI: N/A

The subject of these actions is a City Council-approved funding commitment for up to \$20,491,607, and a \$3,123,330 conditional loan to backstop State Infill Infrastructure Grant funds, for the development of the 185-unit Belovida at Newbury Park, an affordable senior housing project to be located at King Road and Dobbin Drive. For this project, on November 17, 2009, the City Council had also approved the issuance of up to \$26,200,000 in tax-exempt multifamily housing revenue bonds, a loan of the bond proceeds to the borrower, and a change in the project’s income restrictions.

On October 20, 2009, the Director of Housing approved business terms for the construction/permanent loan of up to \$20,491,607 to the borrower in connection with the Belovida at Newbury Park project as evidenced by the term sheet dated November 17, 2009.

The approved business terms are as follows:

Terms for Construction/Permanent Loan	
Loan Amount:	\$20,491,607
Interest Rate:	2.1% Simple Interest
Loan Term:	3 years for the Construction Loan 55 years for the permanent Loan
Repayment:	Residual Receipts from 60% of Net Cash Flow
Total Affordable Units:	185 Units restricted as follows: 48 units @ 30% AMI, 136 units @ 50% AMI, 1 Unrestricted Manager’s Unit
Affordability Term:	64 Years

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On November 19, 2009, the Director of Housing approved business terms for a conditional loan to backstop the State Infill Infrastructure Grant award in connection with the Belovida at Newbury Park project as evidenced by the term sheet dated November 17, 2009. The purpose of the Conditional Loan is to ensure the State funds are available at the time they are needed in construction by forwarding City funds if needed, and using State funds to reimburse the City.

The approved business terms are as follows:

Terms for Conditional Loan	
Conditions:	Only activated if the senior lender requires it
Loan Amount:	\$3,123,330
Interest Rate:	0%
Loan Term:	3 years for the Construction Loan 55 years for the permanent Loan
Repayment:	State IIG funds as soon as available, or, if not available, Residual Receipts from the borrower's 40% share of Net Cash Flow
Total Affordable Units:	185 Units restricted as follows: 48 units @ 30% AMI, 136 units @ 50% AMI, 1 Unrestricted Manager's Unit
Affordability Term:	4 additional years for commitment plus 3 additional years for activation, totaling either 68 Years or 71 Years

Finally, on December 17, 2009, the Director of Housing approved business terms to disburse up to \$1,400,000 in the form of an interim construction loan in order to allow the project to pay the required permits and fees and to start site grading and trenching. The Interim Loan was necessary in order to meet the upper-tier investor's required construction schedule. Of the approved amount, almost \$1 million was paid to the City and County for permits and fees.

The approved business terms are as follows:

Terms for Interim Construction Loan	
Loan Amount:	\$1,400,000
Interest Rate:	2.1% Simple Interest
Loan Term:	The earlier of the close of the remaining construction/permanent financing, anticipated to occur no later than June 30, 2010
Repayment:	Residual Receipts from 60% of Net Cash Flow
Total Affordable Units:	185 Units restricted as follows: 48 units @ 30% AMI, 136 units @ 50% AMI, 1 Unrestricted Manager's Unit
Affordability Term:	64 Years

Brookwood Terrace Family Apts., L.P. – District: 3 – SNI: Five Wounds/Brookwood Terrace

On March 3, 2009, the City Council approved a land acquisition loan of up to \$5,200,000, with ROEM Development Corporation (“ROEM”). This loan was subsequently reduced to \$4,600,000 based on appraised value. Because of a lack of sufficient funding at that time, the construction/permanent loan approval request was separated from the acquisition loan request and deferred until funding was available. ROEM purchased this site in March 2009 using the City’s land acquisition loan.

On May 19, 2009, the City Council approved a funding commitment of up to \$10,893,000 for predevelopment and construction/permanent financing for the development of the project. The loan commitment of \$10,893,000 included the \$4,600,000 land acquisition loan. The land was transferred to the San José Joint Financing Authority at the construction loan closing. The land purchase was deducted from the construction/permanent loan amount. A portion of the total credit was structured as a ground purchase/leaseback. The ground purchase is in the amount of \$4,600,000.

On December 15, 2009, the Director of Housing approved the following for the development of the Brookwood Terrace Family Apartments:

- 1) Specific business terms for the Council approved construction/permanent loan for the project, evidenced by the term sheet dated December 15, 2009.
- 2) A \$1,000,000 increase in the Brookwood construction/permanent loan.
- 3) A capitalization of up to \$142,362 accrued predevelopment and acquisition loan interest.
- 4) A capitalization of up to \$642,505 in construction period interest.

The approved business terms are as follows:

Terms for Construction/Permanent Loan	
Loan Amount:	\$8,077,867
Interest Rate:	4.00% Simple interest.
Loan Term:	48 Months for Construction 363 Months at Permanent
Repayment:	Principal and Interest due from Residual Receipts (70% of net cash flow after permitted expenses)
Total Affordable Units:	Total 84 Units with 21 Units @ 30% AMI, 13 Units @45% AMI, 49 Units @ 50% AMI, and 1 Unrestricted Manager’s Unit
Affordability Term:	55 Years.

2112 Monterey Road, L.P. – District: 7 - SNI: N/A

On January 27, 2009, the City Council adopted a resolution approving up to \$500,000 predevelopment loan for Charities Housing, or its designated affiliate for the predevelopment of the Markham Terrace site. The land and improvements consists of 2.86 acres currently improved with a 95-unit SRO apartment building and a 5,000 square feet restaurant building. The improvements will demolished to make way for the new residential apartment development that may be constructed in two phases starting in January 2013 and January 2015 respectively..

On August 4, 2009, The City executed a Forbearance and Release Agreement dated January 27, 2009 with EHC, Comerica Bank, and the County of Santa Clara, wherein the City agreed to recommend to the City Council that the City Council approve providing funds for the sale of the Markham Terrace in the amount of \$6,280,000.

On August 4, 2009, the City Council adopted a resolution approving up to a \$6,280,000 land acquisition loan for Charities Housing, or its designated affiliate.

On September 30, 2009, Charities Housing submitted a Notice of Funding Availability (NOFA) application for a construction/permanent loan in the amount of up to \$19,349,500 for the development of the project, including up to \$6,280,000 for land acquisition and \$500,000 for predevelopment costs.

On December 19, 2009, the Director of Housing approved specific business terms for the \$6,280,000 site acquisition funding commitment and the \$500,000 predevelopment loan to 2112 Monterey Road, L.P. for the 101-unit Markham Terrace Apartments project as evidenced by the loan term sheet dated December 22, 2009 in accordance with the predevelopment and acquisition loan commitment approvals by the City Council on January 27, 2009, and August 4, 2009, respectively.

The approved business terms are as follows:

Terms for Acquisition/Predevelopment Loan	
Loan Amount:	\$6,780,000
Interest Rate:	2.00% Simple Interest.
Loan Term:	36 Months, with 4 six-month extension options
Repayment:	Principal and Interest due at Maturity
Total Affordable Units:	Total 101 Units, all restricted at or below 120% AMI with two unrestricted Manager's units
Affordability Term:	55 Years

Housing Trust Fund Grants

During the period of October 1, 2009 through December 31, 2009, the Director of Housing approved the following grants:

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Agency Name	Project Name	Funded Amount	Approval Date	Project Description
Non Profit Industries	Social Serve Housing Locator	\$41,000	10/16/2009	To launch the Socialserve.com Housing Locator. Service for City of San José and County of Santa Clara. The County will be contributing to the development of the site that will be updated by owners of multifamily projects.
TOTAL:		\$41,000		

Housing Rehabilitation and Improvement Loans and Grants:

During this quarter, the Director of Housing approved the following Loans and Grants:

<u>ACTIVITY</u>	<u>NUMBER</u>	<u>AMOUNT</u>
REHABILITATION LOANS	13	\$520,500
REHABILITATION GRANTS	82	\$1,046,294
ENERGY GRANTS (stand-alone)	0	0
TOTAL:	95	\$1,566,794

Total Homebuyer Loans made this period:

During this quarter, the following loans closed through the homebuyer program:

<u>ACTIVITY</u>	<u>NUMBER</u>	<u>AMOUNT</u>
Teacher Housing Program (20%) (HOME)	12	\$690,000 \$540,000
SJ State University Faculty and Staff Homebuyer Program	3	\$110,000
Inclusionary Loans	7	\$394,300
Other Project Loans (Including NOFA)	33	\$3,426,220
a) Other—including In-Lieu	0	\$0
b) Other—including HOME	0	\$894,000
BEGIN Loan Program	17	\$1,396,400
Welcome Home Loan Program (CalHome) (HOME)	15	\$325,000 \$724,974
American Dream Downpayment Initiative Loan Program	0	\$0
Developer Discount Loans	0	\$0.00
HOME—HOME Venture (NHSSV)	1	\$185,000
TOTAL:	88	\$8,685,894

Predevelopment Loans

None to report.

TEFRA Hearings

None to report.

COORDINATION

Preparation of this report has been coordinated with the City Attorney's Office.


SCOTT P. JOHNSON
Director of Finance


LESEYE KRUTKO
Director of Housing

For more information, contact Lesye Krutko, Director of Housing, at (408) 535-3851.