



Council Meeting: February 12, 2013

SUBJECT: Approve Assignment and Assumption Agreement between Senior Housing Solutions, The Bill Wilson Center, and the City of Sunnyvale Regarding Socorro Group Home

BACKGROUND

In 2008, the City provided loans of \$710,400 in HOME Investments Partnership Program (HOME) funds and \$200,000 in Community Development Block Grant (CDBG) funds to Senior Housing Solutions (SHS), a non-profit agency based in Milpitas, to acquire and rehabilitate a single family home located at 1353 Socorro Avenue in Sunnyvale to serve as one of their senior group residences. This project was approved under RTC 07-157 on May 8, 2007. The Housing Trust also provided a loan of \$100,000 to assist in the rehabilitation effort. The home was completed and occupied in June 2009. Unfortunately, this home has proven to be a rather inaccessible location for the extremely low income seniors served by SHS' group residence program, most of whom no longer drive or do not own cars. The home's location has led to ongoing vacancies, with at least two of the five bedrooms being vacant for most of the time since the home was completed in 2009.

In addition to the ongoing vacancies, SHS found out in June 2011 that the Housing Authority would not award most of the project-based Section 8 vouchers SHS had anticipated when acquiring this home and several others throughout the County, and therefore it did not have adequate operating funds to maintain and operate all of the homes as planned. SHS has already transferred one of its Santa Clara homes to another agency, and has been working with staff for the past year on a transition plan for the Socorro home.

EXISTING POLICY

Housing Element of the General Plan, Goal A

Policy A.2: Facilitate the development of affordable housing through regulatory incentives and concessions, and/or financial assistance.

Policy A.7: Support collaborative partnerships with non-profit organizations, affordable housing builders, and for-profit developers to gain greater access to various sources of affordable housing funds.

Goal E Promote equal housing opportunities for all residents, including Sunnyvale's special needs populations, so that residents can reside in the housing of their choice.

DISCUSSION

Staff has been actively working with SHS and other local jurisdictions on various work-out plans and strategies to address the immediate concerns with several of the group homes without adequate operating subsidies, one of which is the Socorro home in Sunnyvale. Fortunately staff has found a willing and very well-qualified agency willing to assume responsibility for the Socorro home: The Bill Wilson Center (BWC), a long-time human services grantee and operator of a number of group homes for young adults throughout the county. BWC's director, Sparky Harlan, was recently recognized by the White House as a "Champion of Change". BWC intends to operate the home as a group home for very low income young adults aging out of foster care, with one of the five bedrooms occupied by an on-site manager and counselor, subsidized by a County program for housing this population.

BWC is willing to take over operation of the home under the terms and conditions set forth in the Assignment and Assumption Agreement (the "Agreement") provided in **Attachment 1**. One of these terms is that the outstanding debt on the home will be forgiven in the amount that exceeds the home's current value of \$590,000, based on a recent appraisal commissioned by the City. The home's current value is approximately 17% less than the price at which it was acquired at the peak of the housing bubble, in early 2008. Based on this value, the home is currently over-encumbered by \$420,400, not including interest accrued to date under the two City loans. A portion of that over-encumbrance, \$100,000, is owed to the Housing Trust of Santa Clara County, whose interest-free loan is in third position.

Due to the lack of adequate operating income (rents and/or operating subsidies) for this project, SHS is unable to make the monthly loan payments required under the terms of the HOME loan, which deferred all payments of principal and interest for five years, but required fully amortized monthly payments thereafter, beginning this month. The project's cash flow situation is not forecast to improve significantly, since the Housing Authority has suffered funding cutbacks and has indicated any future project-based vouchers will not likely be available for additional SHS homes. Tenant rents, even at full occupancy, would not be adequate to cover the project's debt service and operating costs. Given the property's negative cash flow projections for the foreseeable future, SHS has agreed to transfer the home and all of its furnishings to BWC, provided that they do not incur any additional costs to complete the transfer. They have also agreed to maintain and secure the home until the transfer to BWC is completed.

The City's HUD representative has advised staff that this transfer is allowable provided that the outstanding HOME/CDBG debt in excess of the property's current value (a total of \$320,400 in principal) is forgiven *prior to* the transfer to BWC, rather than handled through a typical short-sale process, where lenders lose a portion of their investment at close of escrow; and provided that the home is maintained as an affordable housing project for the remainder of the HOME affordability period. If these provisions are not met, HUD could require the City to repay the U.S. Treasury with non-HUD funds in the amount of any HOME/CDBG funds lost through default or short sale.

With the proposed forgiveness of a portion of the HOME and CDBG funds invested in this project pursuant to HUD direction, the City does not have to repay any funds. However, it will not receive all of the loan payments it originally anticipated when these loans were made, therefore this transfer will reduce to a small extent the amount of funding available for future housing projects. Fortunately, this reduction has already been offset by several loans on much larger housing projects, which were recently repaid in full decades before they were due.

Although any loss of City housing funds is unfortunate, this is the only City-assisted housing project that has resulted in a loss of City housing funds throughout the entire historic recession and real estate collapse of 2008-2010. However, staff is pleased that a highly-regarded agency has stepped forward that meets the HUD guidelines for use of the HOME and CDBG funds and has a dedicated source of operating funds for the project, and a waiting list of eligible tenants interested in occupying this home.

Furthermore, BWC has agreed to an excess proceeds clause which would allow the City to receive any proceeds realized through any sale of the home by BWC in the next thirty years, although BWC has stated that it intends to own the home for at least that long.

FISCAL IMPACT

The proposed transfer would reduce projected revenues to the HOME fund by approximately \$228,700 (consisting of \$120,400 in principal and approximately \$108,300 in deferred interest accrued to date); and would reduce revenues to the CDBG Revolving Loan Fund by approximately \$227,800 (\$200,000 in principal and \$27,800 in interest accrued to date). However, the remaining \$590,000 in HOME debt secured by the Socorro home will be assumed by BWC at a reduced interest rate of 1%. This amended loan will be fully deferred, with principal and interest due and payable in thirty years, and the home will continue to serve as a HOME-compliant affordable housing project for another thirty years.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

RECOMMENDATION

Approve Agreement and associated escrow documents as approved by the City Attorney. Authorize the City Manager to execute Agreement and any required escrow documents on behalf of the City.

Reviewed by:

Hanson Hom, Director, Community Development
Prepared by: Suzanne Isé, Housing Officer

Reviewed by:

Grace Leung, Finance Director

Approved by:

Gary M. Luebbers
City Manager

Attachments

Assignment and Assumption Agreement between Senior Housing Solutions, The Bill Wilson Center, and the City of Sunnyvale

RECORDING REQUESTED BY:

CITY OF SUNNYVALE

Record at No Fee per Government Code § 6103

AND WHEN RECORDED MAIL TO:

Housing Division

City of Sunnyvale

P.O. Box 3707

Sunnyvale, CA 94088-3707

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**ASSIGNMENT AND ASSUMPTION AGREEMENT
BETWEEN SENIOR HOUSING SOLUTIONS
THE BILL WILSON CENTER, AND THE CITY OF SUNNYVALE**

APN: 104-17-053-00

Property Address: 1353 Socorro Avenue, Sunnyvale

This Assignment and Assumption Agreement is dated as of March 20, 2013 and is made by and between **Senior Housing Solutions**, a California nonprofit corporation, whose address is 512 Valley Way, Milpitas, California, 95035, hereinafter “SHS,” and **The Bill Wilson Center**, a California nonprofit corporation, whose address is 3490 The Alameda, Santa Clara, California, 95050, hereinafter “BWC,” and the **City of Sunnyvale**, a California charter city and municipal corporation, whose address is P.O. Box 3707, Sunnyvale, California, 94088-3707, hereinafter “City.” All three agencies shall be referred to collectively herein as “the Parties”. This Assignment and Assumption Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties.

RECITALS

A. SHS owns and operates a five-bedroom group home for very low income seniors located at 1353 Socorro Avenue in Sunnyvale (“the Property”), as further described in the legal description provided in Exhibit “A”.

B. SHS acquired the Property on January 17, 2008 for a sale price of \$710,400, financed entirely by a first mortgage loan from City, consisting of \$710,400 in federal HOME Investments Partnership Program funds (“the HOME loan”). The HOME loan carried an interest rate of 3% for thirty-year term, with all payments of principal and interest fully deferred for a five-year period ending in February 2013. Thereafter fully amortizing monthly payments would become due over the remaining 25 years of the term, secured by the HOME loan deed of trust. As a condition of this loan, as set forth in a HOME loan agreement between City and SHS, a HOME regulatory agreement was recorded binding the property to the HOME program regulations, requiring its use as a five-bedroom group home for very low income seniors, and limiting rents

to the HOME program “Low HOME rents”. This regulatory agreement is binding on all future assignees or successors in interest to the Property for the term.

C. In order to complete an extensive rehabilitation of the home, SHS obtained a second mortgage loan of \$200,000 in federal CDBG revolving loan funds from the City (“the CDBG loan”) and a third mortgage loan of \$100,000 from the Housing Trust of Santa Clara County (“the Housing Trust loan”) on June 26, 2008. Both of these loans were fully deferred for the term. The CDBG loan was secured by a Deed of Trust, and a CDBG regulatory agreement was recorded against the Property, requiring compliance with federal CDBG regulations and other requirements of the CDBG loan agreement.

D. The total debt on the Property, consisting of the HOME loan, the CDBG loan, and the Housing Trust loan (the “Original Financing”), not including interest accrued to date, currently equals One Million Ten Thousand and Four Hundred Dollars (\$1,010,400), as no payments of principal or interest were made on any of the loans. The recent national decline in home prices has resulted in a significant decline in the Property’s value since it was acquired by SHS in 2008. The Property’s current appraised value is \$590,000, therefore the property is over-encumbered by \$420,400 (“the Over-Encumbrance”).

E. The City has agreed to forgive a portion of the outstanding City debt in the amount of the Over-encumbrance, less the amount of the Housing Trust loan, conditioned upon the agreement of SHS and BWC (“the Parties”) to complete the assignment and assumption of the Property in a timely manner and under the terms set forth herein, and upon the continued use and operation of the property by BWC as a group home for very low income individuals, consistent with the HOME and CDBG regulations associated with affordable rental housing projects. The CDBG loan principal shall be forgiven in full, and \$120,400 of the HOME loan principal shall be forgiven, as well as all interest accrued to date under both City loans, prior to transfer of title to BWC.

F. BWC is a nonprofit agency which intends to acquire the Property to operate it as a group home to provide transitional housing for youth aging out of foster care (aged 18-21 years). One of the five rooms in the home will be occupied by an on-site program manager employed by BWC, and the remaining rooms will each be occupied by a client of the BWC program. BWC clients do not pay rent, however the County provides a monthly stipend adequate to cover BWC’s costs to maintain the Property and operate the program, including regular contributions to a property maintenance reserve.

G. SHS desires to assign all of its interest in the Property to BWC and BWC desires to assume SHS’s interest in the property and assume responsibility for the Property and its day-to-day operations as a group home and HOME-eligible affordable housing project. The City hereby approves this assignment and assumption, as it provides an excellent opportunity to provide housing for an underserved population in a location near services, employment, and higher education.

H. The obligation to repay the HOME loan of \$710,400 is evidenced by the HOME loan Agreement (“AGREEMENT”) between SHS and the CITY, recorded on January 17, 2008 as

Santa Clara County Recorder's Document No. **19710893**, a Promissory Note ("NOTE") between SHS and CITY, dated **January 15, 2008**, and a Deed of Trust in favor of the CITY, dated January 15, 2008 and recorded on January 17, 2008 as Recorder's Document No. **19710894**. These documents are incorporated herein by reference as though fully set forth.

I. At Closing, SHS wishes to assign and BWC desires to assume the HOME Loan Agreement, Promissory Note and Deed of Trust as amended to reflect the reductions in balance owed to \$590,000, and to defer all payments of HOME loan principal and interest for the Amended HOME Term, as set forth below; and

J. At Closing, City shall forgive the entire debt owed under the CDBG Loan prior to, and conditioned upon, assignment of the Property from SHS to BWC.

NOW THEREFORE, the parties agree as follows, at CLOSING:

1. **Assignment and Assumption of Property and Certain Encumbrances.** SHS assigns and BWC assumes the rights, interest and obligations of SHS set forth in the HOME Loan Agreement, Deed of Trust, Regulatory Agreement, and Promissory Note dated **January 15, 2008**, (collectively, the "HOME Loan Documents") and BWC agrees to be bound by each and all of the terms and provisions of the HOME Loan Documents as though the documents had originally been made, executed and delivered by BWC, with the exception of the amendments to the Loan terms described in Recital I. SHS further assigns and BWC assumes the rights, interest and obligations of SHS set forth in the CDBG Regulatory Agreement dated **June 26, 2008** and recorded on July 3, 2008 as Recorder's Document No. **19909658**, which shall survive extinguishment of the debt owed under the CDBG Loan.
2. **Amendment of Regulatory Agreements.** City and BWC mutually agree that the HOME and CDBG Regulatory Agreements shall be amended to reflect several changes in occupancy and operation of the project, from a group home for very low income seniors, to a group home for very low income young adults participating in BWC programs, as described in more detail in the Amended Regulatory Agreements, which shall be recorded at CLOSING. All other federal and City requirements and obligations associated with the original HOME and CDBG Regulatory Agreements and associated federal regulations shall remain in force.
3. **Term.** The term of the HOME Loan and the term of affordability restrictions under the amended HOME Regulatory Agreement shall end thirty (30) years from close of escrow, ending in 2043 (collectively, the "Amended HOME Term"). The term of restrictions under the Amended CDBG Regulatory Agreement shall remain unchanged, ending on July 4, 2028.
4. **Consent and Release.** The CITY consents to the assignment to BWC upon the completion of the Acquisition and at that time hereby releases SHS from all obligations thereunder. If the acquisition is not completed by **April 15, 2013**, this Assignment and Assumption Agreement shall become null and void.
5. **Deed of Trust.** At Closing, BWC shall execute an Amended Note and Amended Deed of Trust, assuming the rights, interest and obligations of SHS as set forth in Section 1. The

Amended Deed of Trust shall be recorded in the Official Records of Santa Clara County, securing the CITY's HOME Loan with a principal balance of \$590,000. Concurrently with the recording of such DEED OF TRUST, the City shall reconvey the original HOME and CDBG Deeds of Trust dated January 15, 2008 and June 26, 2008, respectively.

6. Restrictions on the Sale/Transfer/Use of Property

a. It is agreed and understood that the PROPERTY has been acquired with HOME funds and rehabilitated with CDBG funds for use as a group home for very low income individuals. As such, BWC agrees to comply with all HOME and CDBG Program laws, rules and regulations, including those that apply to affordable rental housing acquired and rehabilitated with HOME and CDBG funds.

b. Per the terms of the City's agreement, BWC may not sell, convey, alienate, transfer, lease, dispose of, encumber, assign, discontinue or change the use of the PROPERTY or any interest in such PROPERTY without first obtaining the written consent of CITY. The Property must at all times during the Term be used as affordable housing for very low income individuals.

c. If during the HOME term of restrictions the use of the Property changes to a use which does not provide affordable housing, or if the property is sold, conveyed, alienated, transferred, leased, disposed of, encumbered or assigned without obtaining prior written approval of CITY, then BWC shall pay to CITY the fair market value of the property at the time of sale, less reasonable closing costs incurred by BWC, and any encumbrances specifically authorized in writing by CITY. BWC's payment must be sufficient so that at a minimum the CITY receives, as its share of the sale proceeds, (i) if and to the extent it is still outstanding, \$590,000 in principal plus interest pursuant to the HOME Loan Agreement, plus (ii) any excess proceeds as defined below. Upon any such payment, the HOME loan shall be deemed fully paid and satisfied and the DEED OF TRUST shall be released and the terms of this Assignment and Assumption shall no longer be in effect.

d. Excess Proceeds. In the event that BWC transfers the Property at any time during the Amended HOME Term, BWC shall pay to City any excess proceeds generated by the sale of the property, in compliance with the HOME Program regulations governing use of HOME Program Income. Excess proceeds are defined as 100% of the gross sales proceeds, less seller's customary expenses associated with the sale, and less payment of any debt still owing on the HOME loan. Such payment shall be returned to City for deposit in the City's HOME Program Income account, or a successor affordable housing program account, if the HOME Program Income account no longer exists. This requirement shall be included as a provision of the Amended HOME Loan Documents.

7. Successors and Assigns. This Agreement applies to, inures to the benefit of, and binds all parties of this Agreement and their respective successors, assigns and legal representatives.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

SHS: Senior Housing Solutions

By: _____

Name/Title: _____

BWC: The Bill Wilson Center

By: _____

Name/Title: _____

CITY: THE CITY OF SUNNYVALE
a municipal corporation

By: _____

Name: Gary J. Luebbers

Title: City Manager

Approved as to form:

Kathryn Berry
Assistant City Attorney

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) 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 upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) 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 upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

EXHIBIT A

Legal Description of Property

The land is situated in the State of California, County of Santa Clara, City of Sunnyvale and is described as follows:

Lot 344, as shown on that certain Map entitled "Tract No. 1444 Lakewood Village No. 1", which Map was filed for records in the Office of the Recorder of the County of Santa Clara, State of California on March 22, 1955 in Book 55 of Maps at Page(s) 12 to 15.

APN: 104-17-053-00