

COUNCIL ACTION FORM

SUBJECT: 2017/18 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) HOMEBUYER ASSISTANCE PROGRAM RESALE AND RECAPTURE PROVISIONS IN CONJUNCTION WITH THE 321 STATE AVENUE HOUSING SUBDIVISION DEVELOPMENT

BACKGROUND:

On July 11, the City Council provided direction to staff to proceed with development of a 37-lot subdivision at 321 State Avenue in partnership J-Corp Inc. as the developer of the site. The development concept includes platting of 37 lots as Phase 1 of development of the site with an option for a second phase of development in the future for a total of 43 lots. The planned subdivision will include a minimum of 20 affordable homes to be constructed for low and moderate-income households and 17 market rate homes. J-Corp Inc. will be the developer for both the affordable and the market rate homes and they will be the builder of the all of the affordable low and moderate income homes. Staff is continuing to work with J-Corp on a creating a development agreement to proceed with the project. IN addition to public infrastructure assistance, the City committed to funding a first time homebuyer program for the 321 State Avenue. **Staff requires direction from City Council on preferences for resale/recapture provisions for properties sold to qualified low and moderate-income first-time homebuyers receiving down payment and closing cost assistance in conjunction with the development.**

The City's previous Home Buyer Assistance Programs have included program guidelines for resale/recapture provisions regarding down payment and closing cost assistance. Some of the specific circumstances that would trigger these provisions during the occupancy of the home included: sale, transfer, conveyance, lease of other disposition of the property by the buyer within various timeframes.

Staff has complied in Attachment A some of those recapture provisions that have been imposed as part of the City's home buyer programs since the 1990's. Beginning in the 2000's, the City's down payment assistance has been in the form of a 2% loan repayment that varied over a 7 to 12 year timeframe and the amount of down payment given has varied from \$5,000 to \$13,500. In addition to down payment assistance, City provided closing assistance ranging from \$1,000 to \$2,500. The closing cost assistance has been in the form of a deferred grant if the buyer continues to reside on the property for 5-7 years.

The City Council will need to consider the overriding philosophy for the first time homebuyer program and priorities for the affordable homes constructed at 321 State Avenue. There are two different perspectives on the philosophy for such a program. The first philosophy for the program can be to create housing stability for the first time homebuyer and allow for them to build equity and security through home ownership. A second philosophy for the program can be to maintain affordable housing supply for future homebuyers if the initial buyer is not a long term resident

of the property. Using a resale/recapture provision will address the second philosophy by deterring a short tenure of ownership of the property. There are a wide variety of options to consider resale/recapture provisions that address setting resale price, penalties for early resale, or stating a requirement for a subsequent purchaser to be a qualified low income household. Staff has focused on the resale penalty approach for its clear standard and ease of administration.

Outlined in Attachment B for your review and consideration, staff has proposed two options for the financial assistance and the recapture provisions for the Home Buyer Program for the 321 State Avenue development. **Option 1, is our typical 2% loan rate for the down payment and affordability assistance and a deferred grant for the closing cost assistance.** The recapture provision for this assistance would be a reduced penalty payback over specified timeframe (10% for 1-10 years, 5% for 11-15 years, 2% for 16-20 years).

Option 2, would be a 100% grant all of the forms of assistance (down payment, affordability, and closing cost assistance). The recapture provision for this assistance would be a fixed 25% penalty payback over a 20 year period.

Option 1 which includes a loan allows for program income to be reused for future CDBG programming, while Option B does not. (Assuming no penalties are charged)

The maximum amount of the assistance provided (\$25,500) and the events of default would remain the same in both options.

Once direction is provided, staff will be working with our legal counsel to provide the correct language to the program documents (i.e. subordinate mortgage, loan agreement, promissory note).

Additionally, depending on the outcome of the infrastructure bid plans and specifications, these guidelines may need to be revised. City Council will review the bids for the infrastructure on November 14th along with the draft development agreement.

ALTERNATIVES:

1. The City Council can approve the resale and recapture provisions for the 2017-18 CDBG Homebuyer Assistance Program of Attachment B, Option 1 with a down payment assistance loan and recapture provisions.
2. The City Council can approve the resale and recapture provisions for the 2017-18 CDBG Homebuyer Assistance Program of Attachment B, Option 2 with a down payment assistance loan and recapture provisions.
3. The City Council can modify, and then approve, the resale and recapture provisions for the 2017-18 CDBG Homebuyer Assistance Program in conjunction the development a mixed-income housing subdivision at 321 State Avenue.
4. The City Council can defer action on this item to November 14th.

CITY MANAGER'S RECOMMENDED ACTION:

The developer and staff work will continue to work to finalize a draft development agreement that is consistent with City Council's direction from July 11, 2017. A determination as to which resale/recapture provision to utilize will assist the parties in completing this task.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving the resale and recapture provisions for the 2017-18 CDBG Homebuyer Assistance Program as outlined in Attachment B, Option 1 for the development of a mixed-income housing subdivision at 321 State Avenue.

It should be emphasized that for both the affordable and the market rate homes for the development at 321 State Avenue, covenants will be in place on each lot prohibiting the rental of a home in perpetuity.

ATTACHMENT A

Financial Assistance

1994 (Existing Properties Purchase Program)

First-time homebuyers will be able to receive financial assistance up to approximately \$24,000 to help purchase their first home (this includes mortgage buy down assistance, closing cost assistance, and assistance for *minor* repairs).

Resale/Recapture Provisions

No Payment Required:

Participant shall have no obligation to make any payment to the City under this Agreement until thirty (30) years after the date of this agreement, if the Participant retains ownership of the said Property, without renting any part of it, and complies with the terms of this agreement and the policies of the City of Ames Affordable Housing Program, for a period of thirty (30) years from the date of this agreement.

Payment Required:

Participant shall pay to City a sum equal to the amount of grant funds received, and such payment shall be due and payable to the City immediately upon the occurrence of any of the events as follows:

- (a) The said property is sold or conveyed to any party other than a surviving spouse of the Participant.
- (b) Occupancy of the said property by the Participant(s) or the surviving spouse of the Participant ceases, for any reason other than temporary travel or illness, for a period of sixty (60) consecutive days, whether or not Ownership of the property is transferred.
- (c) Ownership of the said property is sold or transferred by the Participant or Participant's surviving spouse during the aforesaid thirty (30) year period.
- (d) All or any part of the said property is rented to any person other than the Participant.
- (e) Any breach of or non-compliance with the promises, terms, and conditions of this Agreement or of the City of Ames Affordable Housing Program policies and procedures.
- (f) Thirty (30) years have passed after the date of this agreement.

Events of Default

The following, by way of specification but not limitation, shall constitute events of default of this agreement:

- (a) The applicant/borrower(s) has a principal place of residence at some place other than the property.
- (b) The applicant/borrower(s) causes or permits the property to be damaged, in disrepair, the site of a public nuisance, or otherwise the site of conditions that unreasonably interfere with the use and enjoyment of other properties in the vicinity, ordinary wear and tear accepted.
- (c) Any misrepresentation in the applicant/borrower(s) application for the loan.
- (c) Breach of any provision of the aforesaid promissory note or of the aforesaid mortgage.
- (d) Sale, transfer, conveyance, lease or other disposition of the Property by the applicant/borrower(s) within seven (7) years of the date of this agreement and before repayment of the loan has been accepted by the Program funders.
- (f) Any proceedings for the foreclosure of the mortgage instituted by the participating lenders that provided the loan financing.

Financial Assistance	Resale/Recapture Provisions	Events of Default
<p>2005 (Existing Property Purchases)</p> <p>The financial assistance under this program will be in the form of a loan at 2% interest (except for the closing cost assistance program, which will be in the form of a grant). All participating applicant/borrower(s) will be required to sign the contract and lien agreement, subordinate mortgage, and promissory note prior to closing.</p> <p>The following type(s) of assistance will be available:</p> <p>(1) <u>Down Payment Assistance</u> 17% of the purchase price will be made available for down payment assistance under this program.</p> <p>(2) Closing cost assistance given to applicant/borrower(s) will be in the form of a grant and shall not exceed \$2,000 (borrower(s) will be responsible for closing costs that exceed this amount).</p>	<p>In the event that the property is sold, transferred, conveyed, leased or otherwise disposed of by the applicant/borrower(s) the following recapture provision will apply:</p> <ul style="list-style-type: none"> ▪ If property is sold in year's 1-3, recapture payment of 8% of *sales price. ▪ If property is sold in year's 4-6, recapture payment of 4% of *sales price. ▪ If property is sold in year's 7-10, recapture payment is 2% of *sales price. <p>*sales prices = original purchase price under the program.</p> <p>At any time if the property is sold to a first-time homebuyer, whose total household income does not exceed 110% of the Story County median income limits, the recapture payment would be reduced by 50%.</p>	<p>The applicant/borrower(s) has a principle place of residence at some place other than the property;</p> <ul style="list-style-type: none"> (a) The applicant/borrower(s) causes or permits the property to be damaged, in disrepair, the site of a public nuisance or otherwise the site of conditions that unreasonably interfere with the use and enjoyment of other properties in the vicinity, ordinary wear and tear excepted; (b) Any misrepresentation in the applicant/borrower(s) application for the loan; (c) Breach of any provision of the aforesaid promissory note or of the aforesaid mortgage; (d) Sale, transfer, conveyance, lease or other disposition of the Property by the applicant/borrower(s) within seven years of the date of this agreement and before repayment of the loan has been accepted by the City; (e) Any proceedings for the foreclosure of the mortgage instituted by the participating lenders that provided the loan financing. <p>Event of Foreclosure: In the event of a default by the applicant/borrower(s) to the participating lender (first lien holder) and foreclosure procedures are instituted by the participating lender, The Operating Agency on behalf of the City (second lien holder), on a case by case basis may forgive the subordinate mortgage when there is no likelihood that a sufficient amount of money will be available after the first lien holder has received their balance due.</p>

Financial Assistance	Resale/Recapture Provisions	Events of Default
<p>2008 (Ames/Story County) Existing Property Purchases</p> <p>The financial assistance under this program will be in the form of a loan at 2% interest (except for the closing cost assistance program, which will be in the form of a grant). All participating applicant/borrower(s) will be required to sign the contract and lien agreement, subordinate mortgage, and promissory note prior to closing.</p> <p>(1) Down Payment Assistance: Program funds may be used to provide up to 50% of the (product specific) required down payment.</p> <p>(2) Affordability Assistance: Program funds will provide up to an additional \$8,500 for purchase assistant to help reduce the monthly PITI payments.</p> <p>(3) Closing Costs and Pre-paid: Program funds will provide up to \$2,500 towards the closing cost including pre-paid. Total closing costs shall not exceed \$1,500 (under this program the closing cost is limited to \$1,500). Borrower(s) will be responsible for closing costs that exceed this amount.</p> <p>(4) All three (3) forms of the above assistance cannot exceed \$13,500.</p>	<p>In the event that the property is sold, transferred, conveyed, leased or otherwise disposed of by the applicant/borrower(s) the following recapture provision will apply:</p> <p>City of Ames will require full payback of all of the closing cost and pre-paid given as a grant, if the property is sold within seven (7) years from the date of closing.</p> <p>At any time if the property is sold to a first-time homebuyer, whose total household income does not exceed 80% of the Story County median income limits, the recapture payment would be waived.</p>	<p>The following, by way of specification but not limitation, shall constitute events of default of this agreement:</p> <ul style="list-style-type: none"> (a) The applicant/borrower(s) has a principal place of residence at some place other than the property. (b) The applicant/borrower(s) causes or permits the property to be damaged, in disrepair, the site of a public nuisance, or otherwise the site of conditions that unreasonably interfere with the use and enjoyment of other properties in the vicinity, ordinary wear and tear accepted. (c) Any misrepresentation in the applicant/borrower(s) application for the loan. (d) Breach of any provision of the aforesaid promissory note or of the aforesaid mortgage. (e) Sale, transfer, conveyance, lease or other disposition of the Property by the applicant/borrower(s) within seven (7) years of the date of this agreement and before repayment of the loan has been accepted by the Program funders. (f) Any proceedings for the foreclosure of the mortgage instituted by the participating lenders that provided the loan financing.

<p style="text-align: center;">Financial Assistance</p>	<p style="text-align: center;">Recapture/Assessment Upon Sale or Default</p>	<p style="text-align: center;">Events of Default</p>
<p>2013 (Acquisition/Rehabilitation of Homes purchased by the City)</p> <p>a. Down Payment Assistance: Program funds may be used to provide up to 50% of the (product specific) required down payment.</p> <p>b. Affordability Assistance: Program funds will provide up to an additional \$8,500 for purchase assistant to help reduce the monthly PITI payments.</p> <p>c. Closing Costs and Pre-paids: Program funds will provide up to \$2,500 towards the closing cost including pre-paids. Total closing costs shall not exceed \$1,500 (under this program the closing cost is limited to \$1,500). Borrower(s) will be responsible for closing costs that exceed this amount.</p> <p>d. All three (3) forms of the above assistance cannot exceed \$13,500</p>	<p>In the event that the Property is sold, transferred, conveyed, leased, or otherwise disposed of by the Borrower within seven (7) years from the date of this Agreement, before repayment of the loan has been accepted by the Lender, or in the event of default of this Agreement, the total amount of the unpaid balance of the loan made by this Agreement shall then be due and payable in a lump sum to the Lender with 4% interest on the whole amount loaned under this Agreement as aforesaid.</p> <p><u>Equity Gap.</u></p> <p>a. Amount of loan secured by second mortgage. The amount of the loan shall be the sum of (1) the difference between the Buyers' lender's appraised value of the Property and \$100,000 (hereafter the Equity Gap), and (2) the amount of \$10,000 for the Mortgage Assistance Loan (hereafter "Mortgage Assistance Loan").</p> <p>b. No payment required for the Equity Gap. Participant shall have no obligation to make any payments to Seller under this Agreement if the Participant retains ownership of said Property, without renting any part of it, and complies with the terms of this agreement and the policies of the City of Ames CDBG Home Buyer Assistance Program, for a period of sixteen (16) years from the date of this Agreement.</p>	<p>Payment shall be due and payable to the Seller immediately upon the occurrence of any of the events as follows:</p> <ol style="list-style-type: none"> 1. The said property is sold or conveyed to any party other than a surviving spouse of the Participant during the aforesaid sixteen-year period. 2. Occupancy of the said property by the Participant or the surviving spouse of the Participant ceases, for any reason other than temporary travel or illness, for a period of sixty (60) consecutive days, whether or not ownership of the property is transferred. 3. Ownership of the said property is sold or transferred by the Participant or Participant's surviving spouse during the aforesaid sixteen-year period. 4. All or any part of the said property is rented to any person other than the participant. 5. Any breach of or non-compliance with the promises, terms, and conditions of this Agreement or of the City of Ames CDBG Home Buyer Assistance Program policies and procedures.

ATTACHMENT B-OPTION 1

Financial Assistance	Resale/Recapture Provisions	Events of Default
<p>2017-18 (321 State-New Construction)</p> <p>The financial assistance under this program will be in the form of a loan at 2% interest over 240 months (20 years) for the down payment and affordability assistance. The closing cost assistance program will be in the form of a grant with no repayment if buyer resides in the property for 8 years.</p> <p>The following type(s) of assistance will be available:</p> <p>(1) Down Payment Assistance: Program funds may be used to provide up to 50% of the (product specific) required down payment.</p> <p>(2) Affordability Assistance: Program funds will provide an addition amount not to exceed \$22,500 for purchase assistant to help reduce the monthly PITI payments.</p> <p>(3) Closing Costs and Pre-paids: Program funds will provide up to \$2,500 towards the closing cost including pre-paids. Borrower(s) will be responsible for closing costs that exceed this amount.</p> <p>(4) All three (3) forms of the above assistance cannot exceed \$25,500.</p>	<p>In the event that the property is sold, transferred, conveyed, leased or otherwise disposed of by the applicant/borrower(s), in addition to repayment of Financial Assistance, the following recapture provision will apply:</p> <ul style="list-style-type: none"> ▪ If property is resold in year’s 1-10, recapture payment of 10% of resale price*. ▪ If property is sold in year’s 11-15, recapture payment of 5% of sales price*. ▪ If property is sold in year’s 16-20, recapture payment is 2% of sales price*. <p>*resale = proposed sales price at the time the applicant/borrower(s) is selling.</p> <p>At any time if the property is resold to a qualified first-time homebuyer approved by the City, whose total household income does not exceed 80% of the Ames Metropolitan Statistical Area (AMSA) income limits, the recapture payment would be <u>waived</u>.</p> <p>NOTE: The resale/recapture provision obligations are in addition to the loan obligations for the down payment and affordability assistance.</p>	<p>The applicant/borrower(s) has a principle place of residence at some place other than the property;</p> <p>(a) The applicant/borrower(s) causes or permits the property to be damaged, in disrepair, the site of a public nuisance or otherwise the site of conditions that unreasonably interfere with the use and enjoyment of other properties in the vicinity, ordinary wear and tear excepted;</p> <p>(b) Any misrepresentation in the applicant/borrower(s) application for the loan;</p> <p>(c) Breach of any provision of the aforesaid promissory note or of the aforesaid mortgage;</p> <p>(d) Sale, transfer, conveyance, lease or other disposition of the Property by the applicant/borrower(s) within seven years of the date of this agreement and before repayment of the loan has been accepted by the City;</p> <p>(e) Any proceedings for the foreclosure of the mortgage instituted by the participating lenders that provided the loan financing.</p> <p>Event of Foreclosure: In the event of a default by the applicant/borrower(s) to the participating lender (first lien holder) and foreclosure procedures are instituted by the participating lender, The Operating Agency on behalf of the City (second lien holder), on a case by case basis may forgive the subordinate mortgage when there is no likelihood that a sufficient amount of money will be available after the first lien holder has received their balance due.</p>

ATTACHMENT B-OPTION 2

Financial Assistance	Resale/Recapture Provisions	Events of Default
<p>2017-18 (321 State-New Construction)</p> <p>The financial assistance under this program will be in the in form of a 100% GRANT all forms of assistance listed below.</p> <p>The following type(s) of assistance will be available:</p> <p>(2) Down Payment Assistance: Program funds may be used to provide up to 50% of the (product specific) required down payment.</p> <p>(2) Affordability Assistance: Program funds will provide an addition amount not to exceed \$22,500 for purchase assistant to help reduce the monthly PITI payments.</p> <p>(3) Closing Costs and Pre-paids: Program funds will provide up to \$2,500 towards the closing cost including pre-paids. Borrower(s) will be responsible for closing costs that exceed this amount.</p> <p>(4) All three (3) forms of the above assistance cannot exceed \$25,500.</p>	<p>In the event that the property is sold, transferred, conveyed, leased or otherwise disposed of by the applicant/borrower(s), in addition to repayment of Financial Assistance, the following recapture provision will apply:</p> <ul style="list-style-type: none"> ▪ If property is resold in year’s 1-20, recapture payment of 25% of resale* price. <p>*resale = proposed sales price at the time the buyer is selling.</p> <p>At any time if the property is resold to a qualified first-time homebuyer approved by the City, whose total household income does not exceed 80% of the Ames Metropolitan Statistical Area (AMSA) income limits, the recapture payment would be <u>waived</u>.</p>	<p>The applicant/borrower(s) has a principle place of residence at some place other than the property;</p> <ul style="list-style-type: none"> (a) The applicant/borrower(s) causes or permits the property to be damaged, in disrepair, the site of a public nuisance or otherwise the site of conditions that unreasonably interfere with the use and enjoyment of other properties in the vicinity, ordinary wear and tear excepted; (b) Any misrepresentation in the applicant/borrower(s) application for the loan; (c) Breach of any provision of the aforesaid promissory note or of the aforesaid mortgage; (d) Sale, transfer, conveyance, lease or other disposition of the Property by the applicant/borrower(s) within seven years of the date of this agreement and before repayment of the loan has been accepted by the City; (e) Any proceedings for the foreclosure of the mortgage instituted by the participating lenders that provided the loan financing. <p>Event of Foreclosure: In the event of a default by the applicant/borrower(s) to the participating lender (first lien holder) and foreclosure procedures are instituted by the participating lender, The Operating Agency on behalf of the City (second lien holder), on a case by case basis may forgive the subordinate mortgage when there is no likelihood that a sufficient amount of money will be available after the first lien holder has received their balance due.</p>