Council Meeting of
February 28, 2012

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: City Manager – Consider subordination of lien for property located at 22730 Evalyn Avenue.

RECOMMENDATION

Recommendation of the City Manager that City Council consider a request from Jeff and April Cherness to subordinate a City of Torrance lien in the amount of $11,200 on property located at 22730 Evalyn Avenue in Torrance for the purpose of refinancing their existing first trust deed loan.

FUNDING

No funding is required for the requested action; if the Council approves the subordination the payment will be held in abeyance under the current terms and conditions of the lien. If the Council does not subordinate the loan, then the City will receive $11,200.00.

BACKGROUND/ANALYSIS

The City of Torrance owns property between Anza and Kathryn Avenue known at one time as the Lomita right-of-way. It was determined that Lomita Boulevard was not going to be extended in this area, and a park was to be developed instead. During the development process, it was discovered that several of the adjacent residential parcels encroached into the city-owned land. Through the negotiation process, the adjacent property owners were allowed to purchase the area of encroachment for $20.00 per square foot. There were three options for purchase:

1. Pay the amount owed at close of escrow
2. 12 months no interest then 60 months of payments
3. A lien to be placed against the property for the amount owed, at no interest, to be "due and payable to the City of Torrance when the first of either or the following occur: (i) When any or all interest(s) or title to the subject property described in the Deed of Trust is voluntarily or involuntarily sold, transferred or conveyed to any person or entity, or (ii) upon the death of the last surviving signer of this Note who at the time of execution of this Note was the owner of record of the subject Property..."

Option three was chosen by the property owner and now the owner wishes to refinance the first trust deed loan on the property. A title search conducted by the lender shows the City lien and a request to subordinate our loan to the first was made. City staff believes

that pursuant to the language in Option Three there is a conveyance of an interest in the property as the current first trust deed holder will be conveying their position to the new first trust deed holder. Therefore, it is staff's position the City loan is due and payable.

The property owner believes that the language in the lien allows for this type of transaction as they are not selling the property and state that was their belief during the transaction (Attachment A).

Staff recommends that the City Council make a demand for payment to close out the lien on the property based on the terms and conditions of the transaction made with the City at time of sale. If the City Council does not concur, then staff would recommend that the City Council approve a subordination of loan to the first trust deed and authorize the Mayor to Execute and the City Clerk to Attest to the Agreement, such form to be approved by the City Attorney.

Respectfully submitted,

LeROY J. JACKSON
City Manager

By: Brian K. Sunshine
Assistant to the City Manager

CONCUR:

LeRoy J. Jackson
City Manager

Attachments: A) Letter dated February 21, 2012
B) Property Purchase Loan Promissory Note Secured By Deed Of Trust (Deferred Loan)

Attachment A

Mr. Brian Sunshine
Assistant to the City Manager
3031 Torrance Boulevard
Torrance, Ca. 90503

February 21, 2012

Dear Mr. Sunshine,

We want to make a formal request to the Torrance City Council to keep our lien as a subordinate loan. Our house is located at 22730 Evalyn Ave. which is one of the properties adjacent to the new Seaside Heroes Park. We were one of the families that agreed to purchase the parcel of land needed for the park. The City offered several options to pay for the parcel, and we elected to go with the option of paying after we sold our house. We signed that agreement on July 6, 2010.

The reason this has become an issue is that we are at the final stage of refinancing our current mortgage. Like many others, we have been struggling through this slow economy and welcomed the chance of trying to lower our monthly mortgage payment. We started the process in early January and it wasn't until last week that we discovered that our lien was actually preventing the final loan approval. We want to be completely honest and say that we really had no idea that this lien would affect our refinancing. When we were given the options about how to pay for the purchase of the new parcel from the city, we understood that one of the options would be to wait until we sold our house. We had no idea that a refinance would trigger any change to that agreement. In fact, we would have addressed this issue many weeks ago if we knew that there were going to be any problems.

We did investigate the possibility of incorporating our lien with the new loan we are seeking. Unfortunately, our monthly payment would not be improved from the current amount so that option would not help our situation.

Our current request to keep our lien as a subordinate loan will not impact your position. In fact, since we now owe less on our home, the City's position will actually be improved. We ask that the City Council make a decision as quickly as possible since our loan "lock in" amount will expire on Monday, March 5th.

Thank you for taking the time to go over our request and we look forward to hearing from you soon after the City Council meeting on February 28th.

Jeff and April Cherness

Attachment B

PROPERTY PURCHASE LOAN
PROMISSORY NOTE
SECURED BY DEED OF TRUST (DEFERRED LOAN)

Property Purchase Agreement Information

Owner(s): Jeffrey S. and April L. Cherness
Address: 22730 Evalyn Avenue
APN: 7527-012-001
Square Footage @ $20 per sq ft: 560
Purchase amount: $11,200.00
Date of agreement: July 6, 2010

FOR VALUE RECEIVED, We/I jointly and severally, promise to pay to the CITY OF TORRANCE, a Municipal Corporation, on order at 3031 Torrance Boulevard, or at such other location as the beneficiary of this Note and the Deed of Trust, the sum of $11,200.00, with no interest due on the unpaid amount. The total unpaid balance of this Note shall be immediately due and payable to the City of Torrance when the first of either or the following occur: (i) When any or all interest(s) or title to the subject property described in the Deed of Trust is voluntarily or involuntarily sold, transferred or conveyed to any person or entity, or (ii) upon the death of the last surviving signer of this Note who at the time of execution of thls Note was was the owner of record of the subject Property as described in Exhibit A.

The undersigned may repay any part to the principal amount of the Note at anytime before it is due without penalty or premium. The undersigned promises to notify in writing the City of Torrance at least fifteen (15) days before any transfer of any interest in the property or within fifteen (15) days after the death of the last surviving signer of this note who at the time of execution of the Note was an eligible applicant for the residential rehabilitation program and a resident of the subject property.

With the execution of this Note and Deed of Trust, said property shall be recorded in the Office of the County Recorder against the subject property. The Principal amount shall be payable in lawful money of the United States. If legal action is instituted on this Note, the undersigned promises to pay any and all court costs and attorneys' fees which are incurred to recover any and all monies due under this Note, said costs and attorneys' fees may be fixed by a court or said total sum may be documented by the City of Torrance. This Note is secured by a Deed of Trust to CITY OF TORRANCE, a California Municipal Corporation.

Owner: (Please Print) JEFFREY S. CHERNESS APRIL L. CHERNESS

Signature: Jeff S. Cherness April L. Cherness

[52203_1.DOC]

EXHIBIT "A"
LEGAL DESCRIPTION FOR PORTION OF LOT 189 TO APN 7527-012-001

THE LAND REFERRED TO HEREIN IS SITUATED IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

BEING A 3.00 FOOT STRIP OF LAND WITHIN LOT 189 AS SHOWN ON THE MAP OF TRACT NO. 19108 RECORDED IN BOOK 479, PAGES 34 THROUGH 37 INCLUSIVE OF MAPS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, LYING SOUTHWESTERLY AND PARALLEL TO THE SOUTHERLY LINE OF LOT 39 OF SAID TRACT NO. 19108, BOUNDED ON THE NORTHWEST BY THE SOUTHWESTERLY PROLONGATION OF THE WESTERLY LINE OF SAID LOT 39 AND BOUNDED ON THE SOUTHEAST BY THE SOUTHERLY PROLONGATION OF THE EAST LINE OF SAID LOT 39.

EXCEPTING THEREFROM ALL MINERALS, OIL AND OTHER HYDROCARBON SUBSTANCES BELOW A DEPTH OF 500 FEET, TOGETHER WITH THE RIGHT TO REMOVE THE SAME FROM LOCATIONS ON ADJACENT LANDS BUT WITH NO RIGTH OF ENTRY UPON SAID LAND, FOR THE PURPOSE OF THE REMOVAL OF SAID MINERALS, GAS, OIL AND OTHER HYDROCARBONS SUBSTANCES, AS RESERVED BY FITZ-GERALD & LITROV, A CORPORATION, IN DEED RECORDED JANUARY 7, 1953 AS INSTRUMENT NO. 1672 IN BOOK 40673 PAGE 247 OF OFFICIAL RECORDS.

CONTAINING AN AREA OF 560.258 SQUARE FEET MORE OR LESS.

SUBJECT TO: ALL COVENANTS, RIGHTS OF WAY AND EASEMENTS OF RECORD.

EXHIBIT "B": ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED UNDER THE SUPERVISION OF:

8.25.10

JAN A. ADAMS, R.C.E. 21687
EXPIRES 9-30-11

REGISTERED PROFESSIONAL ENGINEER
JAN A. ADAMS
No. 21687
Exp. 09/30/11
CIVIL
STATE OF CALIFORNIA

CHICAGO TITLE COMPANY

19191 S. Vermont Ave.#100, Torrance, CALIFORNIA 90502
(310)769-6648 Fax (310)769-6221

June 8, 2011

JEFFREY S. CHERNESS and APRIL L. CHERNESS
22730 EVALYN
TORRANCE, CALIFORNIA 90505

Property: 560 SQ FEET PARCEL, TORRANCE, CALIFORNIA
Escrow No: 910045883 X04

Dear Sirs:

In connection with the above referenced escrow, which closed on 6/6/11, we enclose the following:

Settlement Statement for your information and records

Copies of Note, Deed of Trust & Quitclaim Deed

Any recorded document to which you are entitled will be mailed to you directly from the County Recorder's office. Your Policy of Title Insurance will be mailed to you under separate cover.

We know you had a choice and appreciate your choosing Chicago Title Company. We look forward to assisting you with your future real estate transactions.

Thank you for choosing Chicago Title Company.

Sincerely,
CHICAGO TITLE COMPANY

Joann Black
Escrow Officer

CHICAGO TITLE COMPANY

BUYER'S/BORROWER'S SETTLEMENT STATEMENT

ESCROW NUMBER: 05660-910045883-001 ORDER NUMBER: 05660-910045883

CLOSING DATE: 06/11/11 CLOSER: Joann Black

BUYER: JEFFREY S. CHERNESS and APRIL L. CHERNESS

SELLER: CITY OF TORRANCE

PROPERTY: 560 SQ FEET PARCEL, TORRANCE, CALIFORNIA

	CHARGE BUYER	CREDIT BUYER
Sales Price	$ 11,200.00	$
New Loan From CITY OF TORRANCE, A MUNICIPAL CORP.		11,200.00
TOTALS	$ 11,200.00	$ 11,200.00