Reviewed and Approved by Executive Director:
August 4, 2021

FOR ACTION

I. REQUEST

Request to Approve Subordination of the HCDA's Equity Sharing Payment for Reserved Housing Units to Allow Unit Owners to Obtain a Second Mortgage Under the following Conditions:

(a) The Maximum Allowable Second Mortgage Amount Is Limited to the Original Sales Contract Price Plus Any Partial Shared Equity Payments Minus the Remaining Mortgage, and

(b) The Total Allowable First Mortgage Plus Second Mortgage Does Not Exceed the Current City and County of Honolulu Property Tax Assessed Value, if the Current Property Tax Assessed Value is Less than the Original Sales Contract Price.

II. BACKGROUND

The HCDA currently oversees over 800 Reserved Housing units governed by Hawaii Administrative Rules (HAR), with several hundred more under construction.

Currently, the HCDA administratively approves subordinations of its Equity Sharing Payment under certain conditions for those units governed by the 2005 and 2011 Rules.

At its August 5, 2020 Kakaako Meeting, the Authority approved several limited actions relating to the administration of HCDA's Reserved Housing Program, including the approval of subordinations to allow owners to refinance their primary mortgage up to 95% of the original purchase price. The minutes for the August 5, 2020 Kakaako Meeting are attached hereto as Exhibit A.

Unless previously subordinated by the HCDA, HCDA's Equity Sharing Payment is second only to a primary mortgage on a Reserved Housing unit at the time of the original sale.

At its July 7, 2021 Kakaako Meeting, the Authority also approved subordinating the HCDA's Equity Sharing Payment in favor of the City and County of Honolulu's Down Payment Loan Assistance (DPL) Program to assist eligible buyers of Reserved Housing Units. This action allows the HCDA's Equity Sharing Payment to be placed in "third position," behind the City's DPL Program loan for applicable Reserved Housing Units.

Historically, the HCDA has not approved subordinating the HCDA's Shared Equity interest to a second mortgage (i.e., Home Equity Line of Credit (HELOC)) that would demote the HCDA's "second position" on the property. However, Reserved Housing unit owners continue to inquire about HELOCs and whether the HCDA would agree to subordinate its Equity Sharing payment to allow such owners to access equity in their units.

III. DISCUSSION

HCDA's Equity Sharing Payment is generally the difference between the Original Fair Market Value of the unit and its Original Sales Contract Price, but not to exceed the difference between the Resale Fair Market Value and the Original Sales Contract Price. All reserved housing units that have been sold after the regulated term have sold above the Original Fair Market Value and HCDA has received the full difference between the Original Fair Market Value and Original Sales Contract Price as its equity sharing payment.

The HCDA's sister agency, the Hawaii Finance and Development Corporation (HHFDC), also holds a similar shared equity interest in all of its affordable housing units. The HHFDC currently allows second mortgages and HELOCs up to a certain maximum amount.

Given continued requests by Reserved Housing Owners, staff proposes establishing a program for subordination of the HCDA's Equity Sharing Payment for Reserved Housing Units to allow unit owners to obtain a second mortgage following guidelines similar to those set by HHFDC and allowing second mortgages, such as HELOCs, under the following conditions:

1. The maximum allowable second mortgage amount is limited to the Original Sales Contract Price plus Any Partial Shared Equity Payments minus the Remaining Mortgage, and

2. The total allowable first mortgage <u>plus</u> second mortgage does not exceed the current City and County of Honolulu property tax assessed value, if the current property tax assessed value is less than the Original Sales Contract Price.

A graphic representation of the above conditions and examples of the maximum allowable second mortgages for actual Reserved Housing units are attached hereto as Exhibit B.

By limiting second mortgages to the above formula, HCDA's Equity Sharing Payment will be safeguarded, creating no additional risk related to the second mortgage. Although some level of risk will always exist, the risk would only be related to market conditions, which is not under HCDA's control. This is the same level of risk that exists even without a second mortgage on reserved housing units. .

Also, with the recent amendment to the Reserved Housing Rules, Reserved Housing Unit owners can now prepay all or a portion of their Shared Equity Payment. The above formula takes into consideration any partial prepayments and provides the owner with full access to that equity as part of the second mortgage maximum limit.

IV. RECOMMENDATION

Authorize the Executive Director to Subordinate the HCDA's Equity Sharing Payment for Reserved Housing Units to Allow Unit Owners to Obtain a Second Mortgage Under the Conditions described above and undertake all tasks necessary to effectuate the purpose(s) of this For Action Item.

Attachments:
Exhibit A – August 5, 2020 Kakaako Authority Meeting Minutes
Exhibit B – Second Mortgage Explainer Chart and Examples

Prepared By: Lindsey Doi, Asset Manager ____________

Reviewed By: Deepak Neupane, P.E., AIA, Executive Director ____________

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
KAKAAKO BUSINESS MEETING

Wednesday, August 5, 2020

MINUTES

I. CALL TO ORDER/ROLL CALL

A regular business meeting of the Kakaako Members, Hawaii Community Development Authority ("Authority" or "Board"), a body corporate and a public instrumentality of the State of Hawaii, met virtually (utilizing the state-supported Zoom platform) for a meeting on August 5, 2020.

Board Chairperson, John Whalen, called the meeting to order at 10:02 a.m. and conducted board attendance, as follows:

Members Present:	Kevin Sakoda Chason Ishii Jason Okuhama David Rodriguez, DOT (Ex-Officio) Phillip Hasha Daniel Ito Wei Fang John Whalen, Chair
Members Absent:	Kathy Sokugawa, DPP Robert Yu, B&F (Ex-Officio)
HCDA Staff Present:	Garett Kamemoto, Interim Executive Director Lindsey Doi, Asset Manager Francine Murray, Program Specialist Garet Sasaki, Administrative Services Officer Tommilyn Soares, Secretary to the Executive Director
Legal Counsel:	Lori Sunakoda, Deputy Attorney General Kelly Suzuka, Deputy Attorney General

Acknowledgement that the Meeting is Being Convened Virtually

Chair Whalen reiterated the wording contained in the Meeting Agenda regarding the state's response to the COVID-19 pandemic, the state's efforts to slow the community spread of the virus and Governor David Y. Ige's issuance of Supplementary Emergency Proclamations which suspended Chapter 92 of the Hawaii Revised Statutes to the extent necessary to enable public boards and commissions to conduct business without holding meetings open to the public.

With regard to the foregoing, Chair Whalen reiterated wording contained in the Meeting Agenda noting that HCDA welcomes public attendance via the Zoom link and HCDA's Facebook Page contained in the meeting agenda, HCDA also welcomes public comment and public participation via submission of written and or verbal testimony (consistent with the social distancing guidelines and Emergency Proclamation directives in effect).
Chair Whalen stated that individuals from the public who have requested to provide testimony are on standby and will be permitted to speak during the public testimony session of the specific agenda item.

II. ACTION ITEMS

Shall the Authority Delegate to the Interim Executive Director the Authority to Take the Following Limited Actions Relating to the Administration of the HCDA's Reserved Housing Program as Described in the August 5, 2020 Staff Report-Approve Requests Relating to 1) Sale or Transfer After the Regulated Term, 2) Sale or Transfer During the Regulated Term, and 3) Owners' Refinancing Request and Subordination of Shared Equity Interest?

Ms. Doi presented the staff report. Hawaii Community Development Authority (HCDA) staff requests the continuation of its existing Reserved Housing policies governing sales of units during and after the regulated term, as well as refinancing. Without the approval of these blanket policies, each request from a Reserved Housing unit owner will require a separate action item at future Authority meetings.

At the September 7, 2016 General Meeting, the Authority approved several policies relating to the administration of the HCDA Reserved Housing Program for a term of four years. These policies will expire on September 7, 2020, requiring further action by the Authority to allow HCDA staff to continue processing Reserved Housing requests.

The HCDA oversees about a thousand Reserved Housing units governed by Hawaii Administrative Rules (HAR), with several hundred more under construction. These rules allow certain actions with approval by the Authority, such as refinancing or selling a unit during or after the regulated term.

At the September 7, 2016 meeting, the Authority enacted the following Reserved Housing policies until September 7, 2020:

1. **Sale or Transfer <u>After</u> the Regulated Term** – Accept the payment of Shared Equity and execute of the Release of Unilateral Declaration to allow the reserved housing unit owner to sell the unit at market after the regulated term has expired, provided the Shared Equity value is not calculated under the formulas listed in HAR §15-22-187(b)(2) of the 2005 Rules, HAR §15-218-41(b)(2) of the 2011 Rules, or HAR §15-216-41(b)(2) of the Kalaeloa Rules.

   The HCDA does not have history of administering these calculations for Shared Equity, as to date, these formulas have always yielded lower results than the standard Shared Equity calculation of the Original Fair Market Value less the Original Sales Price. By rule, the Shared Equity due is the <u>higher</u> of the two formulas.

2. **Sale or Transfer <u>During</u> the Regulated Term** – Exercise the HCDA's first option to "buy back" a reserved housing unit if the owner needs to sell during the regulated term, provided there are funds available in the Hawaii Community Development Revolving Fund, Reserved Housing subaccount.

   The "buy back" price is determined and stipulated by HAR §15-22-186(c)(1) of the 2005 Rules, HAR §15-218-36 of the 2011 Rules, and HAR §15-216-36 of the Kalaeloa Rules. If there are inadequate funds in the Reserved Housing sub-account, and adequate funds elsewhere, staff may propose the buy-back using other funding sources.

3. **Owner's Refinancing Request and Subordination of Shared Equity Interest** – Approve refinancing of owner's primary mortgage up to the value of the original acquisition loan amount, provided it is not greater than 80% of the purchase price.

   Unless previously subordinated by the HCDA, HCDA's Shared Equity interest is second only to a primary mortgage on a Reserved Housing unit at the time of the original sale. To safeguard the value and collection of HCDA's Shared Equity interest, the HCDA denies all requests subordinating the HCDA's Shared Equity interest to a second mortgage (such as a Home Equity Line of Credit or similar financing tool) that would demote the HCDA's "second position" on the property.

The above policies approved at the September 7, 2016 meeting were consistent with Authority action in previous years. If any request fell outside of the above parameters, or if the unit owner appealed the HCDA's policy, the request would be brought back to the Authority for further action.

On August 2, 2017, the Authority approved a Memorandum of Agreement (MOA) with the Hawaii Housing Finance and Development Corporation (HHFDC) to allow HHFDC to serve as the HCDA's designated "buy back" agent for Rycroft Terrace for any Reserved Housing units sold during the regulated term. This MOA allows HHFDC to repurchase such units on HCDA's behalf, then resell them under HHFDC's own affordable housing program to keep them affordable for longer. If HHFDC determines the repurchase is not feasible and declines to proceed, the HCDA releases the unit from the Reserved Housing Program once the owner pays the applicable Shared Equity due to the HCDA.

Two years later, on August 7, 2019, the Authority approved the expansion of this MOA to allow HHFDC to buy back <u>any</u> HCDA Reserved Housing unit sold during the regulated term and resell them as part of HHFDC's own program. Unlike the aforementioned policies, which expire on September 7, 2020, the HHFDC "Buy Back" MOA will remain in place until either the HCDA or HHFDC terminates the agreement.

Regarding **Sale or Transfer <u>After</u> the Regulated Term**, this is largely an administrative matter that requires documentation of the unit being released from the HCDA's Reserved Housing Program and the payment of the Shared Equity due to the HCDA through escrow. HCDA staff recommends no changes and proposes a continuation of the existing policy that has been in effect since September 7, 2016.

Regarding **Sale or Transfer <u>During</u> the Regulated Term**, HCDA staff recommends continuing the existing policy of exercising HCDA's first option to buy back all units offered for sale during the regulated term. This will be done in accordance with the existing MOA with HHFDC. If the HHFDC determines repurchasing the unit is not financially feasible, the HCDA will release the unit from the Reserved Housing Program after the unit owner pays the applicable Shared Equity to the HCDA.

Regarding **Refinancing Requests and Subordinations of HCDA's Shared Equity Interest**, the recent historic low interest rates prompted many Reserved Housing unit owners and lenders to request higher refinancing limits than what was previously allowed. On June 3, 2020, the Authority temporarily increased the maximum allowable refinancing limit to 95% of the original purchase price for all Reserved Housing unit owners governed by the 2005 and 2011 Rules. Many owners and lenders were pleased with this decision and dozens submitted new requests to refinance under the temporary higher limit, which is also set to expire on September 7, 2020.

HCDA staff recognizes the original Reserved Housing policy that limited refinances to only 80% of the original purchase price or the original loan amount, whichever was lower, negatively impacts owners. This policy penalizes owners who put down large down payments (and therefore had small original loans), as they cannot access their own equity. This policy also penalizes owners who put down small down payments, as they cannot refinance their full original loan amount which may have been as high as 95% of the original purchase price.

Therefore, HCDA staff proposes making permanent the temporary policy approved on June 3, 2020, which increased the allowable refinancing maximum to 95% of the original purchase price for all Reserved Housing unit owners governed by the 2005 and 2011 Rules. This has proven to be very simple for HCDA staff to administer and has been met favorably by owners and lenders.

Authority members previously inquired about an alternative calculation by which the HCDA could guarantee the protection of its Shared Equity interest. Under this formula, the refinancing maximum would be calculated as the Current Fair Market Value, less the Shared Equity amount. This would place an additional burden on the unit owner by requiring them to procure a certified appraisal for the purposes of calculating the maximum refinancing limit but would likely yield an even higher refinancing maximum.

For the purposes of comparing the above two formulas proposed for calculating the maximum refinancing limit, the following values are from a unit at Ke Kilohana that was recently appraised:

- The current fair market value is $650,000.
- The original fair market value was $571,000, and the original purchase price was $474,289, so the Shared Equity due to the HCDA is $96,711.
- 95% of the original purchase price is $450,574.55.
- Current fair market value less the Shared Equity is $553,289.

In this example, the Ke Kilohana unit owner could refinance $102,714.45 more if the HCDA changed its policy to allow refinancing up to the value of the Current Fair Market Value, less the Shared Equity.

These results are even more drastic when the Shared Equity amount is low, such as in the case with Reserved Housing units at Pacifica Honolulu. The following are values from a recent Pacifica Honolulu appraisal:

- The current fair market value is $665,000.
- The original fair market value was $415,000, and the original purchase price was $407,000, so the Shared Equity due to the HCDA is $8,000.
- 95% of the original purchase price is $386,650.
- Current fair market value less the Shared Equity is $657,000.

In this example, the Pacifica Honolulu unit owner could refinance $270,350 more if the HCDA utilized the current fair market value in calculating the maximum refinancing limit.

Although such calculations are very favorable for the unit owner, HCDA staff proposes keeping the current formula of allowing refinances up to 95% of the original purchase price. This adds a buffer of protection to HCDA's Shared Equity interest, is extremely simple to calculate, and is the current practice under the temporary policy.

HCDA staff receive at least half a dozen inquiries from Reserved Housing unit owners seeking to refinance or sell their unit each week. The number of requests for refinancing have increased in recent months due to favorable interest rates.

Reviewing each request at the monthly Authority meeting would be a time-consuming process and would also cause delays that might jeopardize a unit owner's ability to refinance or sell their unit. While HCDA staff acknowledge these decisions are significant, staff can rely on consistent application of rules and past practice to render fair decisions for future requests. Delegating this role to the Interim Executive Director and staff would expedite responses to Reserved Housing unit owners and would also streamline the agenda for future Authority meetings.

If blanket policies are approved, any actions taken in accordance with the policies will continue to be reported to the Authority in the monthly Executive Director's report. Any request that does not fall under the above policies or any appeal of the above policies will be brought to the Authority for further action.

Based on Board discussion, the board's intention is to allow for 95% of the original purchase price.

Chair Whalen noted written public testimony submitted by Mr. Tod Gushiken of Ke Kilohana. Mr. Gushiken noted his support to extend authorization for another six months to allow Homeowners to take advantage of the low rates that will help families during the pandemic.

MOTION:
Member Fang motioned for the Authority to delegate the Executive Director the following limited actions relating to the administration of the HCDA's Reserved Housing Program 1) Sale or Transfer After the Regulated Term, 2) Sale or transfer during the Regulated Term, and 3) Owners' Refinancing Request and Subordination of shared equity interest as detailed in the August 5, 2020 Staff Report, with the following correction added to the section of the staff report Regarding Refinancing Request and Subordinations of HCDA's Shared Equity Interest on page 4:

> In regard to Reserved Housing units vested under the 2011 Reserved Housing rules, HCDA staff notes HAR Section 15-218-33 (c) states, "During the regulated term, the Executive Director shall approve any initial or subsequent mortgage placed on a reserved unit which does not exceed eighty per cent of the original purchase price of the unit" This rule does not prohibit the Authority from directing the executive director to approve any subsequent mortgage in accordance with this action item.

Member Okuhama seconded the motion.

Ms. Doi conducted the roll call vote. Motion passed with 7 votes and 2 excused.

Shall the Authority Authorize the Interim Executive Director to Amend the Existing Right of Entry Agreement with KUPU Executed on August 9, 2019 for the Use of a Portion of Oahu Tax Map Key 1-2-001-058: 135 at Kewalo Basin Harbor for the Purposes of Parking and Utility Storage (ROE 1-19) to Extend the Term for an Additional Two Years Until September 30, 2022?

Ms. Doi presented the staff report. Kupu has a continued need for additional storage space, parking, and a propane tank to support its activities at the Net Shed at Kewalo Basin Harbor. Kupu currently holds a one-year Right of Entry (ROE) to utilize a portion of the adjacent NOAA Lot, which is currently pending lease and development by the Howard Hughes Corporation (HHC). Kupu requests an additional two-year extension, as current market conditions related to COVID-19 have delayed both Kupu's and Howard Hughes' plans for developing the lot.

Given the pending lease of the NOAA Lot to HHC, the HCDA cannot enter into any long-term encumbrances for that parcel. Kupu is aware that any ROE for the NOAA Lot will be terminated with at least 30 days written notice once the lease with HHC is executed.

Kupu has engaged in talks with HHC to potentially sublease the NOAA Lot premises from HHC. Both HHC and Kupu believe this could be a mutually beneficial agreement that would still enable HCDA to collect the rent due under the HHC master lease.

Kupu requests amending ROE 1-19 to include a two-year extension that would allow both parties time to reach a long-term agreement that satisfies both their needs. The draft proposed amendment is attached hereto as Exhibit B. Kupu agrees to continue paying $1,232.50 in monthly rent to HCDA for the duration of the ROE extension period. Given the pending execution of a lease with HHC, the HCDA would otherwise be unable to rent the NOAA Lot site and collect any revenue.

There were no questions and no comments and no public testimony.

MOTION:
Member Okuhama motioned for the Authority to Authorize the Interim Executive Director to Amend the Existing Right of Entry Agreement with KUPU Executed on August 9, 2019 for the Use of a Portion of Oahu Tax Map Key 1-2-001-058: 135 at Kewalo Basin Harbor for the Purposes of Parking and Utility Storage (ROE 1-19) to Extend the Term for an Additional Two Years Until September 30, 2022?

Member Sakoda seconded the motion.

Ms. Doi conducted the roll call vote. Motion passed with 7 votes and 2 excused.

VI. ADJOURNMENT

Chair Whalen adjourned the regular meeting at 10:36 a.m.

Approved and Submitted by,

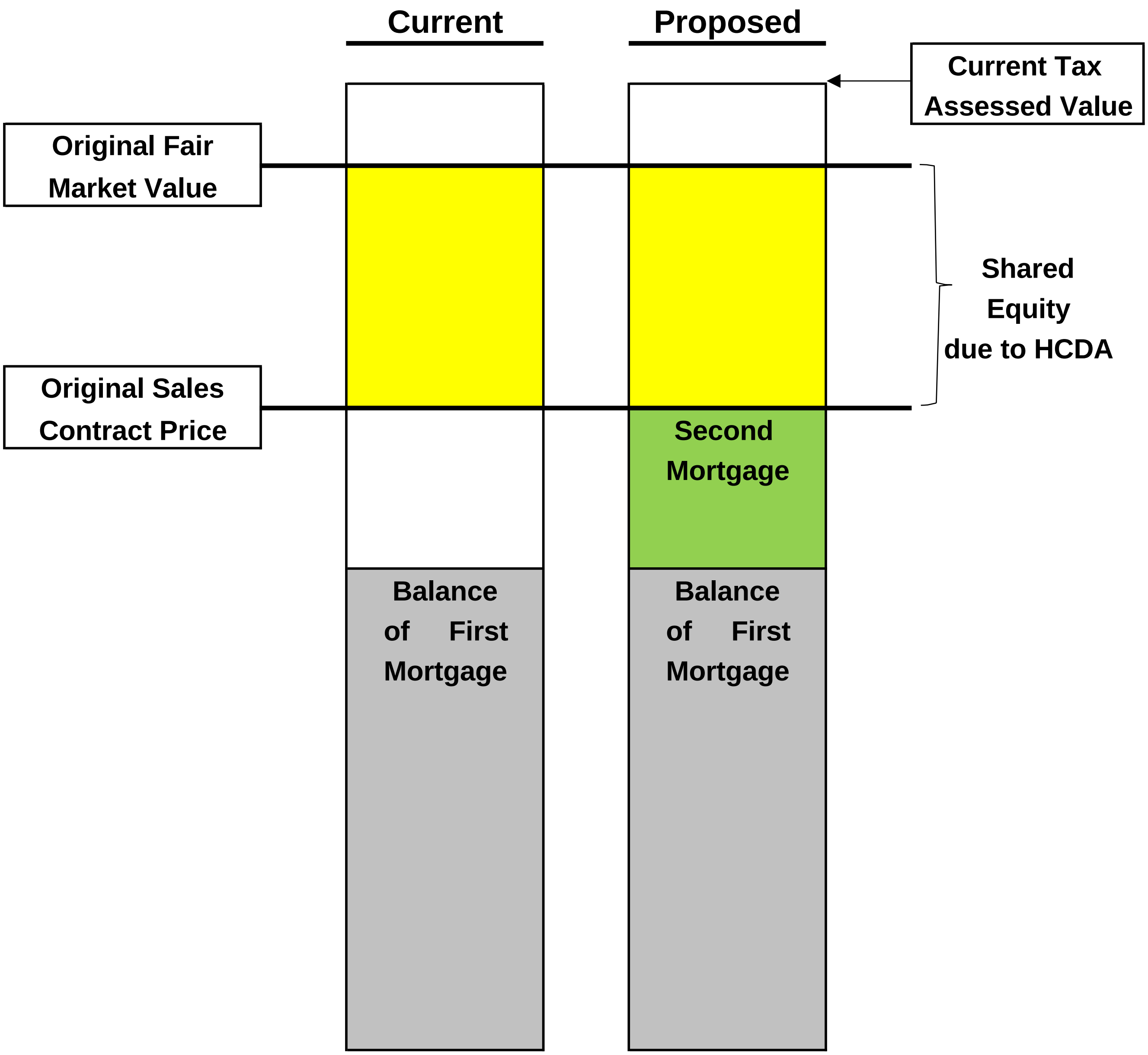
John P Whalen *February 3, 2021*

John Whalen, Chairperson Date Approved by HCDA Board

Exhibit B

Reserved Housing Second Mortgage

For discussion purposes only



Reserved Housing Unit A
Original Fair Market Value: $510,000
Original Sales Contract price: $450,200
Equity Sharing Amount: $59,800 (none prepaid)
Current Remaining Mortgage (principal): $183,675
Current Tax Assessed Value: $626,300

Maximum allowable 2nd mortgage: ($450,200 + $0) - $183,675 = $266,525

Reserved Housing Unit B
Original Fair Market Value: $561,800
Original Sales Contract price: $499,000
Equity Sharing Amount: $62,800 (none prepaid)
Current Remaining Mortgage (principal): $350,000
Current Tax Assessed Value: $794,100

Maximum allowable 2nd mortgage: ($499,000 + $0) - $350,000 = $149,000

Reserved Housing Unit C
Original Fair Market Value: $496,912
Original Sales Contract price: $352,043
Equity Sharing Amount: $144,869 (none prepaid)
Current Remaining Mortgage (principal): $209,582
Current Tax Assessed Value: $598,100

Maximum allowable 2nd mortgage: ($352,043 + $0) - $209,582 = $142,461

Reserved Housing Unit D
Original Fair Market Value: $435,000
Original Sales Contract price: $428,000
Equity Sharing Amount: $7,000 (none prepaid)
Current Remaining Mortgage (principal): $358,854
Current Tax Assessed Value: $759,900

Maximum allowable 2nd mortgage: ($428,000 + $0) - $358,854 = $69,146

Reserved Housing Unit E

Original Fair Market Value: $588,000

Original Sales Contract price: $517,612

Equity Sharing Amount: $70,388 (none prepaid)

Current Remaining Mortgage (principal): $452,357

Current Tax Assessed Value: $489,700

Maximum allowable 2nd mortgage: ($489,700 + $0) - $452,357 = $37,343

Reserved Housing Unit F

Original Fair Market Value: $254,000

Original Sales Contract price: $207,300

Equity Sharing Amount: $46,700 (none prepaid)

Current Remaining Mortgage (principal): $176,205

Current Tax Assessed Value: $210,700

Maximum allowable 2nd mortgage: ($207,300 + $0) - $176,205 = $31,095