




MEMO

from the Department of Administrative Services

Date: January 31, 2014

To: Honorable Mayor, Members of Council and City Manager

From: Patrice Hildreth, Administrative Services Director 

Subject: February 4, 2014 Agenda, Item No. 14
Authorization to Subordinate Development Fee Payment Plan
Agreement – Henderson Village Apartments – Pacific Rim Mixed Use
Project (2012-002)

cc: Julia Lew, City Attorney
Brad Dunlap, Community Development Director

Attached please find the draft Subordination Agreement for your consideration in Item 14 of the February 4th Agenda. Please advise if I may be of further assistance.

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:
City of Porterville
291 N. Main Street
Porterville, CA

APN
ORDER NO.
ESCROW NO.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS AGREEMENT, made (Date), by (Who), a California limited liability company, owner of the land hereinafter described and hereinafter referred to as the "Owner," and City of Porterville, hereinafter referred to as "City" present owner and holder of the Development Fee Payment Plan City Wide Agreement hereinafter described and hereinafter referred to as "Agreement,"

WITNESSETH

THAT WHEREAS, (Who), a California limited liability company, did execute a Development Fee Payment Plan City Wide Agreement, dated (Date), covering:

Complete Legal Description attached hereto as Exhibit "A", made a part hereof and incorporated herein by this reference.

in favor of City of Porterville, which Agreement was recorded (Date), as Instrument No. (Number), Official Records of said county; and

WHEREAS, Owner has executed, a deed of trust and note in the sum of \$(Amount) dated (Date), to (Who) as trustee, covering the above described property in favor of (Who), hereinafter referred to as "Lender", which Deed of Trust was recorded (Date) as Document No. (Number) of Official Records of Tulare County; and

WHEREAS, it is a condition to obtaining said loan that said deed of trust last above mentioned shall unconditionally be and remain at all times a lien or charge upon the land hereinbefore, prior and superior to the Agreement above described; and

WHEREAS, lender is willing to make said load provided the deed of trust securing the same is a lien or charge upon said land prior and superior to the Agreement above described and provided that the "City" will specifically and unconditionally subordinate and subject the Agreement above described, thereunder, to the lien or charge the deed of trust in favor of Lender; and

WHEREAS, it is to the mutual benefit of the parties hereto that Lender make such a loan to Owner; and the "City" is willing that the deed of trust securing the same shall, when recorded, constitute a lien or charge upon said land which is unconditionally prior and superior to the Agreement above described.

NOW, THEREOF, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in order to induce Lender to make the loan above referred to, it is hereby declared, understood and agreed as follows:

- (1) That said deed of trust securing said note in favor of Lender, and any renewals or extensions thereof, shall unconditionally be and remain at all times a lien or charge on the land described therein, prior and superior to the Agreement and to all rights and privileges of the City thereunder, and said Agreement is hereby subjected, and made subordinate, to the lien or charge of the deed of trust in favor of Lender.
- (2) That Lender would not make its loan above described without this subordination agreement.
- (3) That this agreement shall be the whole and only agreement with regard to the subjection and subordination of the Agreement above described to the lien or charge of deed of trust in favor of Lender above referred to and shall supersede and cancel, but only insofar as would affect the priority between the Agreement and the deed of trust hereinbefore specifically described, any prior agreements as to such subjections and subordination, including, but not limited to, those provisions, if any, contained in the agreement above described, which provide for the subjection or subordination of said Agreement to a deed or deeds of trust or to a mortgage or mortgages.

"City" declares, agrees and acknowledges that:

- (a) They consent to and approves (i) all provisions of the note and deed if trust in favor of Lender above referred to, and (ii) all agreements, including but not limited to any loan or escrow agreements, between Owner and Lender for the disbursement of the proceeds of the Lender's loan;
- (b) Lender in making disbursements pursuant to any such agreement is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds and any application or use of such proceeds for purposes other than those provide for in such agreement or agreements shall not defeat the subordination herein made in whole or in part; and
- (c) He intentionally and unconditionally waives, relinquishes, subjects and subordinates the Agreement above described, in favor of the lien or charge upon said land of the deed of the trust in favor of Lender above referred to and understands that in reliance upon, and in inconsideration of, this waiver, relinquishment, subjection and subordination, specific loans and advances are being and will be made and, as part and parcel thereof, specific

monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment, subjection, and subordination.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR LEASE TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENTS OF THE LAND.

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS SUBORDINATION AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.

Owner:

Beneficiary:

(Who)

City of Porterville

By: _____
(who, title)

By: _____
Cameron J. Hamilton, Mayor

Date: _____

Date: _____

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

GENERAL CALIFORNIA ACKNOWLEDGEMENT

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____,
Notary Public, personally appeared _____

_____,
who 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.

Signature _____

(seal)

GENERAL CALIFORNIA ACKNOWLEDGEMENT

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____,
Notary Public, personally appeared _____

, who 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.

Signature _____

(seal)

EXHIBIT A
LEGAL DESCRIPTION