

FORM APPROVED COUNTY COUNSEL
 BY: GREGORY P. PRIAMOS DATE: 5/24/16

**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

943



FROM: Economic Development Agency

SUBMITTAL DATE:
 June 9, 2016

SUBJECT: Subordination Agreement Between the City of Lake Elsinore and the County of Riverside Relating to the Real Property Located at 305 West Sumner Avenue, Lake Elsinore, California 92530, Assessor's Parcel Number 374-072-047-8 [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Subordination Agreement between the City of Lake Elsinore and the County of Riverside relating to the real property located at 305 West Sumner Avenue, Lake Elsinore, California 92530, Assessor's Parcel Number 374-072-047-8;
2. Authorize the Chairman of the Board of Directors to execute the attached Subordination Agreement; and

(Continued)

[Signature]

Robert Field
 Assistant County Executive Officer/EDA

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	
SOURCE OF FUNDS: N/A				Budget Adjustment: No	
				For Fiscal Year: 2015/16	

C.E.O. RECOMMENDATION:

APPROVE

BY: Rohini Dasika
 Rohini Dasika

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- A-30
- 4/5 Vote
- Positions Added
- Change Order

Prev. Agn. Ref.: N/A

District: 1

Agenda Number:

3-27

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

Economic Development Agency

FORM 11: Subordination Agreement Between the City of Lake Elsinore and the County of Riverside Relating to the Real Property Located at 305 West Sumner Avenue, Lake Elsinore, California 92530, Assessor's Parcel Number 374-072-047-8 [\$0]

DATE: May 25, 2016

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RECOMMENDED MOTION: (Continued)

3. Authorize the Assistant County Executive Officer/EDA, or designee, to take all necessary steps to implement the Subordination Agreement including, but not limited to, signing subsequent essential and relevant documents, subject to approval by County Counsel.

BACKGROUND:

Summary

On November 14, 1994, Mariana Mohylyn applied for financial assistance from the County of Riverside to help save her fire damaged home from being demolished by the City of Lake Elsinore and to bring the property up to current code requirements. The home owned by Ms. Mohylyn is located at 305 West Sumner Avenue, Lake Elsinore, California 92530, Assessor's Parcel No. 374-072-047-8 ("Property"). In connection with the County's Home Improvement Program and using Community Development Block Grant funds, the County provided Ms. Mohylyn with financial assistance in the amount of Thirty Eight Thousand Two Hundred Sixty Five Dollars (\$38,265.00) (County Loan) in the form of a deferred loan. Ms. Mohylyn signed a Promissory Note in the amount of the County Loan which is secured by a Deed of Trust with Assignment of Rents as Additional Security (County Deed of Trust) dated July 21, 1995 and recorded on July 27, 1995 in the Official Records of Riverside County Recorder's Office as Document No. 242431. The City of Lake Elsinore (City) inspected and approved the rehabilitation of the Property.

On April 11, 2016, the County of Riverside was served with a 3-Day Notice of Intent to File a Nuisance Petition/Complaint advising all parties with a recorded interest that the City intended to file an action with the Superior Court of the State of California for the appointment of a receiver to abate the substandard conditions on the Property. On April 18, 2016, the City filed a Petition for the Appointment of a Receiver and for Other Relief with the Superior Court of the State of California, Case No. RIC 1604502, relating to the extremely dilapidated single-family residential structure located on the Property (Nuisance Action). Dating back to 2013, the City's Code Enforcement division has unsuccessfully attempted to gain voluntary compliance with the homeowner to bring the Property up to code. The Nuisance Action involves the appointment of a receiver with the power to borrow funds secured by a first priority lien on the Property to bring it into compliance with the law and reimburse the City its cost, expenses, fees, and imposed fines. The City intends to seek recovery of all their costs, expenses, fees, and imposed fines associated with the abatement of this Property. The County was not named as a party to the Nuisance Action or any other related actions.

The City has requested the County subordinate the lien of the County Deed of Trust to any lien of the City or receiver related to the Nuisance Action. A copy of the proposed Subordination Agreement is attached. The County's subordination of its lien on the Property will prevent the need to name the County as a party in any lawsuit or legal proceeding initiated pursuant to the Nuisance Action and prevent the County from possibly being collaterally liable for the costs, expenses, fees, and fines incurred in connection with the subject action. Abatement of the property will eliminate an eyesore to the community and ensure the health and safety of any occupants and the public.

Staff recommends that the Board of Supervisors approve the attached proposed Subordination Agreement between the City of Lake Elsinore and the County of Riverside. County Counsel has approved the Subordination Agreement as to form.

(Continued)

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

Economic Development Agency

FORM 11: Subordination Agreement Between the City of Lake Elsinore and the County of Riverside Relating to the Real Property Located at 305 West Sumner Avenue, Lake Elsinore, California 92530, Assessor's Parcel Number 374-072-047-8 [\$0]

DATE: May 25, 2016

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Impact on Citizens and Businesses

Bringing the subject property into compliance with the law will eliminate an eyesore to the community and ensure the health and safety of any occupants and the public.

ATTACHMENT:

A. Subordination Agreement

Attachment A

Subordination Agreement

RECORDING REQUESTED BY:
City of Lake Elsinore

WHEN RECORDED RETURN TO:
Grant Taylor,
Community Development Director
CITY OF LAKE ELSINORE
130 South Main Street
Lake Elsinore, CA 92530

**EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE SECTION 27383.**

Space Above This Line for Recorder's Use

SUBORDINATION AGREEMENT

This Subordination Agreement ("Agreement") is effective as of _____, 2016 ("Effective Date") by and between the City of Lake Elsinore ("City") and the County of Riverside ("Lienholder"). Lienholder holds a security interest in the parcel of real property known as 305 West Sumner Avenue, Lake Elsinore, California 92530, Assessor's Parcel Number 374-072-047-8 ("Subject Property"), which is further described in Exhibit A to this Agreement.

RECITALS

- A. WHEREAS, the record owner of the Subject Property is Mariana Mohylyn ("Record Owner"), an individual.
- B. WHEREAS, Lienholder holds a security interest in the Subject Property pursuant to a Deed Of Trust With Assignment of Rents As Additional Security recorded against the Subject Property on July 27, 1995 as document 242431 ("Lien").
- C. WHEREAS, the City has initiated a nuisance abatement action ("Action") against the Subject Property and intends to seek recovery of all of the City's costs, expenses, fees, and imposed fines associated with the Action as a first priority lien on the Subject Property.
- D. WHEREAS, the Action may involve the appointment of a receiver ("Receiver") with the power to borrow funds secured by a first priority lien on the Subject Property to bring the Subject Property into compliance with the law and reimburse the City its costs, expenses, fees, and imposed fines.
- E. WHEREAS, Lienholder would have to be a named party in any lawsuit or legal proceeding initiated pursuant to the Action because it would be collaterally liable for the costs, expenses, fees, and imposed fines incurred related to the Action, and Lienholder's interest in the Subject Property would be adversely affected by the first priority liens.
- F. WHEREAS, Lienholder is willing to subordinate its Lien on the Subject Property in order to avoid being named as a party in any legal proceeding taken in furtherance of the Action.

SUBORDINATION AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Lienholder agree as follows:

AGREEMENT

1. **Recitals.** The parties represent and warrant that the Recitals stated above are accurate to the best of their knowledge. The Recitals are incorporated into this Agreement.
2. **Exhibits.** All documents referenced in and attached to this Agreement as Exhibits are incorporated into, and made a part of, this Agreement.
3. **Subordination.** Lienholder intentionally and unconditionally subordinates the priority and superiority of its Lien, and any other interests in the Subject Property Lienholder may have, to any lien recorded in favor of the City or the Receiver related to the Action. Subordination will be effective upon execution of this Agreement, and this Agreement may be recorded on the Subject Property. Upon the City's recovery of its costs, expenses, fees, and fines associated with the Action, this Agreement shall be terminated and of no further force and effect. The Lienholder shall not be liable for any costs, expenses, fees and/or imposed fines incurred in connection with the Action by any party.
4. **Voluntary Agreement.** The parties enter into this Agreement voluntarily upon the advisement of their independent counsel and after having read, understood, and negotiated each of its provisions.
5. **Mutual Negotiation.** This Agreement is the product of the mutual negotiations of the parties and any ambiguities shall not be interpreted in favor of, or against, either party.
6. **Transfers.** Lienholder represents and warrants to City that it is the sole and lawful owner of the Lien, and that it has not previously assigned or transferred any right to the Lien to any other entity or person. The parties further agree that they shall not transfer, assign, delegate, convey, encumber, or hypothecate any of their rights, interests, duties, debts, or obligations arising under this Agreement without the express written permission of the other party. Any unauthorized transfers, assignments, delegations, conveyances, encumbrances, or hypothecation shall be void and ineffective for all purposes.
7. **Beneficiaries.** Except for the Receiver, this Agreement shall not be deemed to confer any rights or benefits upon any third parties, whether directly, indirectly, or by way of subrogation.
8. **Legal Notices.** Notices relating to this Agreement must be in writing and sent to the physical addresses set forth below. A party may change its address for notices by giving notice as required by this provision. Written notice will be considered effective: (a) the day it is personally delivered or actually received; (b) five business days after deposit with the United States Post Office as certified first-class mail with return receipt requested and postage prepaid; or (c) two business days after deposit with a reputable overnight delivery service for next business day delivery.

8.1. **City:** Grant Taylor, Community Development Director, City of Lake Elsinore, 130 South Main Street, Lake Elsinore, CA 92530.

SUBORDINATION AGREEMENT

- 8.2. **Lienholder:** County of Riverside, c/o Housing Authority of the County of Riverside, 5555 Arlington Avenue, Riverside, CA 92504, Attention: Assistant Director of Housing.
9. **Successors.** All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
10. **Governing Law.** This Agreement shall be governed and interpreted in accordance with the laws of the State of California.
11. **Choice of Venue.** The venue for any disputes arising out of this Agreement shall be in the Superior Court of California for the County of Riverside.
12. **Waivers.** All waivers of any provisions, rights, interests, duties, or obligations arising under this Agreement must be in writing. Failure to insist upon strict performance of any provision, right, interest, duty, or obligation arising under this Agreement is not a waiver of the right to future enforcement of that provision, right, interest, duty, or obligation, nor any other provision, right, interest, duty, or obligation in this Agreement.
13. **Modification.** This Agreement can only be changed, modified, amended, supplemented, or rescinded in a separate writing signed by all parties.
14. **Severability.** If any of the provisions of this Agreement are found to be unenforceable, those provisions shall be reformed to prevent the unenforceable result in a manner that best preserves the original intent of the provision to the fullest extent possible, and all other provisions of this Agreement shall remain in full force and effect.
15. **Integration.** This Agreement constitutes the final, complete, and exclusive expression of all the terms and provisions of the agreement between the parties. This Agreement supersedes any previous agreements or negotiations between the parties, whether oral or written.
16. **Authority.** The parties acknowledge and warrant that the persons signing this Agreement are authorized and empowered to execute this Agreement and bind the parties thereto.
17. **Signatures.** By signing below, the parties acknowledge that they have read, understood, and agree to all of the terms of this Agreement.

CITY OF LAKE ELSINORE

By: Grant Taylor
Grant Taylor
Community Development Director
City Lake Elsinore

Dated: 5-25-16

[Signatures Continue on Following Page]

CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

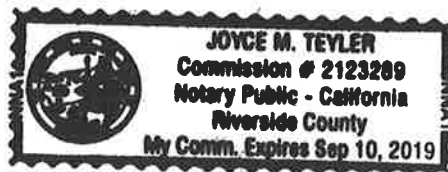
State of California)

County of Riverside)

On 5-25-16, before me, Joyce M. Teyler, Notary Public, personally appeared Grant Taylor, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person 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 Joyce M Teyler

(Seal)

SUBORDINATION AGREEMENT

EXHIBIT A

(LEGAL DESCRIPTION OF THE SUBJECT PROPERTY)

DESCRIPTION:

LOT 3 OF BLOCK 57 OF HEALD'S RE-SUBDIVISION IN THE CITY OF ELSINORE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 8, PAGE 378 OF MAPS, RECORDS OF SAN DIEGO COUNTY.

APN: 374-072-047-8

CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Riverside)

On _____, before me, _____, Notary Public, personally appeared Grant Taylor, Community Development Director for the City of Lake Elsinore, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person 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)