

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



ITEM
3.21
(ID # 4619)

MEETING DATE:

Tuesday, July 25, 2017

FROM : ECONOMIC DEVELOPMENT AGENCY (EDA):

SUBJECT: ECONOMIC DEVELOPMENT AGENCY (EDA): Subordination, Non-Disturbance and Attornment Agreement, Department of Public Social Services, Moreno Valley, District 5 [\$0]

RECOMMENDED MOTION: That the Board of Supervisors approve the attached Subordination, Non-Disturbance, and Attornment Agreement and authorize the Chairman of the Board to execute the same on behalf of the County.

ACTION: Policy

Robert Field, Assistant County Executive Officer/EDA

7/6/2017

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: July 25, 2017
xc: EDA

Kecia Harper-Ihem
Clerk of the Board

By:
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: N/A			Budget Adjustment:	No
			For Fiscal Year:	2017/18

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

On August 5, 2014, the County of Riverside and CP Moreno Valley, L.L.C. entered into a lease agreement for office space located at 12625 Heacock Street, Moreno Valley, for a 52,500 square foot office occupied by the department of Public Social Services.

Lessor has requested a loan to be secured by a deed of trust and Lender has requested execution of the attached Subordination, Non-Disturbance, and Attornment Agreement by the County.

By execution of these agreement, the County agrees to subordinate its leasehold estate to the liens in favor of the Lender which shall have no effect on prospective rights and obligations of the County or the Lender as set forth in the Lease. In addition, in the event the Lender or its successor becomes the Lessor, the County will recognize (attorn) to the Lender or its successor as Lessor and the County's right and obligations shall remain the same (not disturbed) as set forth in the Lease for the remainder of the Lease term.

Impact on Residents and Businesses

This Subordination, Non-Disturbance and Attornment Agreement has no impact on residents and businesses.

Contract History and Price Reasonableness

This Subordination, Non-Disturbance and Attornment Agreement support the original lease and does not require modification of the financial terms of the contract.

Attachment:

Subordination, Non-Disturbance and Attornment Agreement

RF:JVW:VC:VY:HR:ra MV133 19.058 13593

MinuteTrak: 4619

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


Rohini Dasika, Principal Management Analyst

7/17/2017


Gregory E. Priamos, Director County Counsel

7/7/2017

Prepared by:

Ron D. Talley
Hunter, Maclean, Exley & Dunn, P.C.
200 East St. Julian Street
Savannah, Georgia 31401

Recording requested by,
and after recording, return to:

EverBank
Attn: Risk Department
10785 Willows Road NE, Suite 200
Redmond, Washington 98052

Loan No.: 6327136-001

Assessor's Parcel No.: 292-100-018

SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

(12625 Heacock Street, Moreno Valley, Riverside County, California)

This Subordination, Non-disturbance, and Attornment Agreement ("**Agreement**") is made as of April __, 2017, between EVERBANK ("**Lender**"), having its address at 10785 Willows Road NE, Suite 200, Redmond, Washington 98052, Attention: Risk Department, and the COUNTY OF RIVERSIDE ("**County**"), by its authorized representative the Assistant County Executive Officer/EDA having its address at 3403 Tenth Street, Suite 400, Riverside, California 92501.

Recitals:

A. Lender made a loan to ALCHALEL 2016 LLC, a California limited liability company ("**Lessor**"), with an original principal balance of \$10,450,000.00, secured by a Commercial Deed of Trust, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing, recorded on August 3, 2016, as Document #2016-0328617 in the Official Records of Riverside County, California (together with all amendments, increases, renewals, modifications, consolidations, replacements, substitutions, and extensions thereto, either current or future, referred to hereafter as the "**Mortgage**") encumbering the interest of Lessor in real property located in Riverside County, State of California. The legal description of the encumbered real property (the "**Mortgage Premises**") is set forth in Exhibit A, attached to this Agreement. The Mortgage, together with the promissory note or notes, the loan agreement(s), and other documents executed in connection with it are hereafter collectively referred to as the "**Loan Documents**."

B. On August 5, 2014, County entered into a lease agreement with CP Moreno Valley DPSS, LLC, a California limited liability company, predecessor-in-interest to Lessor, for the Mortgage Premises (as amended, the "**Lease**"). The Lease creates a leasehold estate in favor of County for space (the "**Premises**") located on the Mortgage Premises.

To confirm their understanding concerning the legal effect of the Mortgage and the Lease, in consideration of the mutual covenants and agreements contained in this Agreement and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and County, intending to be legally bound, agree and covenant as follows:

1. **Representations and Warranties.** County warrants and represents that the Lease is in full force and effect and that, as of the date of this Agreement and to the best of County's knowledge, there is no default under the Lease by Lessor or County.

2. **County Subordination.**

2.1 Subject to the provisions of Section 3, the Loan Documents shall constitute a lien or charge on the Mortgage Premises that is prior and superior to the Lease, to the leasehold estate created by it, and to all rights and privileges of County under it; by this Agreement, the Lease, the leasehold estate created by it, together with all rights and privileges of County under it, is subordinated, at all times, to the lien or charge of the Loan Documents in favor of Lender.

2.2 By executing this Agreement, County subordinates the Lease and County's interest under it to the lien right and security title, and terms of the Loan Documents, and to all advances or payments made, or to be made, under any Loan Document.

3. **Non-disturbance.**

3.1 Lender consents to the Lease.

3.2 Despite County's subordination under Section 2, and for so long as there shall then exist no breach, default, or event of default on the part of County under the Lease beyond any applicable notice or grace periods, County's peaceful and quiet possession of the Premises shall not be disturbed and County's rights and privileges under the Lease, including, its right to extend the term of the Lease, its right of first refusal to lease the property after expiration of the original term and any extensions thereof, shall not be diminished by Lender's exercise of its rights or remedies under the Loan Documents.

3.3 If (a) Lender, or any other party other than Lender (collectively, a "**Transferee**") shall acquire title to, and possession of, the Premises on foreclosure of the Mortgage in an action in which Lender shall have been required to name County as a party defendant, by deed in lieu of foreclosure, or otherwise, and (b) County is not in default under the Lease beyond any applicable cure or grace periods, has not canceled or terminated the Lease, nor surrendered, vacated or abandoned the Premises and remains in actual possession of the Premises at the time Transferee shall so acquire title to, and possession of, the Premises, and if requested by Transferee, Transferee and County shall enter into a new lease on the same terms and conditions as were contained in the Lease, except that:

(a) The obligations and liabilities of Transferee under a new lease shall be subject to the terms and conditions of this Agreement (including the provisions of Sections 5-7);

(b) Transferee shall have no obligations or liabilities to County under any such new lease beyond those of Lessor as were contained in the Lease; and

(c) The expiration date of any new lease shall coincide with the original expiration date of the Lease.

3.4 County shall not be named or joined in any foreclosure, trustee's sale, or other proceeding to enforce the Loan Documents unless such joinder shall be legally required to perfect the foreclosure, trustee's sale, or other proceeding.

4. Attornment.

4.1 If Transferee shall succeed to Lessor's interest in the Mortgage Premises by foreclosure of the Mortgage, by deed in lieu of foreclosure, or in any other manner, County shall be bound to Transferee under all the terms, covenants and conditions of the Lease for the balance of its term thereof with the same force and effect as if Transferee were the Lessor under the Lease. County shall be deemed to have full and complete attornment to and to have established direct privity between County and:

- (a) Transferee when in possession of the Mortgage Premises;
- (b) A receiver appointed in any action or proceeding to foreclose the Mortgage;
- (c) Any party acquiring title to the Mortgage Premises; or
- (d) Any successor to Lessor.

4.2 County's attornment is self-operating, and it shall continue to be effective without execution of any further instrument by any of the parties to this Agreement or the Lease immediately upon Transferee succeeding to Lessor's interest in the Lease and giving written notice thereof to Lessor, which Lender also agrees to give County. The terms of the Lease are incorporated into this Agreement by reference.

4.3 In consideration of, and as condition precedent to, County's agreement to attorn to any such Transferee, subject to the terms and conditions of this Agreement, Transferee shall be deemed to have assumed all terms, covenants, and conditions of the Lease to be observed or performed by Lessor from the date on which the Transferee succeeds to Lessor's interests under the Lease.

5. Transferee as Lessor. If Transferee shall succeed to the interest of Lessor under the Lease, Transferee shall be bound to County under all the terms, covenants and conditions of the Lease, and County shall, from the date of Transferee's succession to the Lessor's interest under the Lease, have the same remedies against Transferee for breach of the Lease that County would have had under the Lease against Lessor; provided, however, that despite anything to the contrary in this Agreement or the Lease, Transferee, as successor to the Lessor's interest, shall:

(a) Be liable for any act or omission of the Lessor of which Lender had notice prior to foreclosure or deed in lieu thereof, and failed to cure within fifteen (15) days from and after the expiration of the time period provided in the Lease for the cure thereof by Mortgagor, and which related to the repair or maintenance of the Premises; provided that the Transferee may elect either to perform the pre-existing obligation or to permit the County to perform it and to recover the cost out of Rent;

(b) Not be subject to any offsets or defenses expressly permitted under the Lease, including abatement rights which County might have had against Lessor;

(c) Not be bound by any rent or additional rent that County might have paid for more than one month in advance to Lessor; or

(d) Not be bound by (i) any termination or cancellation of the Lease (in whole or in part), or (ii) any amendment or modification of the Lease which (A) reduces the fixed rent payable by County, (B) reduces the term of the Lease, or (C) materially increases Lessor's obligations under the Lease, in the case of (i) or (ii) which is made without Lender's written consent.

(e) Be subject to the County's right to assert continuing claims, such as material interference with the County's use and enjoyment of the premises, against the Lender.

(f) Upon any further transfer of Lessor's interest by Transferee, be relieved of all obligations under the lease as Lessor and such obligations shall terminate as to Transferee.

6. **Right to Cure.** County agrees that, before County exercises any of its rights or remedies under the Lease, Lender shall have the right, but not the obligation, to cure the default within the same time given Lessor in the lease to cure the default, plus an additional thirty (30) days or ten (10) days in the case of defaults in the payment of money from Lessor to County. County agrees that the cure period shall be extended by the time necessary for Lender to commence foreclosure proceedings and to obtain possession of the Mortgage Premises, provided that:

(a) Lender shall notify County of Lender's intent to effect its remedy;

(b) Lender initiates immediate steps to foreclose on or to recover possession of the Mortgage Premises;

(c) Lender initiates immediate legal proceedings to appoint a receiver for the Mortgage Premises or to foreclose on or recover possession of the Mortgage Premises within the thirty (30) day period; and

(d) Lender prosecutes such proceedings and remedies with due diligence and continuity to completion.

7. **Assignment of Rents.** County agrees to recognize the assignment of rents under the Mortgage and all rents and lease termination proceeds, if any, due under the Lease shall be paid to Lender, as assignee, from the time after Lender gives County notice that it is imposing direct-pay under the Loan Documents; provided, however, that the foregoing shall apply only to those amounts that are due or that become due under the terms of the Lease after notice by Lender. Payments of such amounts to Lender by County under the assignment of rents shall continue until the first of the following occurs:

(a) No further rent is due or payable under the Lease;

(b) Lender gives County notice that direct-pay is no longer required under the Loan Documents and instructs County that the rents shall thereafter be payable to Lessor;

(c) The lien of the Mortgage has been foreclosed and the purchaser at the foreclosure sale (whether Lender or a Transferee) gives County notice of the foreclosure sale. On giving notice, the purchaser shall succeed to Lessor's interests under the Lease, after which time the rents and other benefits due Lessor under the Lease shall be payable to the purchaser as the owner of the Mortgage Premises.

8. **County's Reliance.** When complying with the provisions of Section 7, County shall be entitled to rely on the notices given by Lender under Section 7, and Lessor agrees to release, relieve, and protect County from and against any and all loss, claim, damage, or liability (including reasonable attorney's fees) arising out of County's compliance with such notice.

County shall be entitled to full credit under the Lease for any rents paid to Lender in accordance with Section 7 to the same extent as if such rents were paid directly to Lessor. Any dispute between Lender (or Lender's Transferee) and Lessor as to the existence of a default by Lessor under the terms of the Mortgage, the extent or nature of such default, or Lender's right to foreclosure of the Mortgage, shall be dealt with and adjusted solely between Lender (or Transferee) and Lessor, and County shall not be made a party to any such dispute (unless required by law).

9. **Lender's Status.** Nothing in this Agreement shall be construed to be an agreement by Lender to perform any covenant of the Lessor under the Lease unless and until it obtains title to the Mortgage Premises by power of sale, judicial foreclosure, or deed in lieu of foreclosure, or obtains possession of the Mortgage Premises under the terms of the Loan Documents.

10. **Cancellation of Lease.** County agrees that it will not cancel, terminate, or surrender the Lease, except at the normal expiration of the Lease term or as provided in the Lease.

11. **Special Covenants.** Despite anything in this Agreement or the Lease to the contrary, if Lender acquires title to the Mortgage Premises, County agrees that: Lender shall have the right at any time in connection with the sale or other transfer of the Mortgage Premises to assign the Lease or Lender's rights under it to any person or entity, and that Lender, its officers, directors, shareholders, agents, and employees shall be released from any further liability under the Lease arising after the date of such transfer, provided that the assignee of Lender's interest assumes Lender's obligations under the Lease, in writing, from the date of such transfer.

12. **Transferee's Liability (Non-Recourse).** If a Transferee acquires title to the Mortgage Premises:

(a) County's recourse against Transferee for default under the Lease shall be limited to the Mortgage Premises or any sale, insurance, or condemnation proceeds from the Mortgage Premises;

(b) County shall look exclusively to Transferee's interests described in (a) above for the payment and discharge of any obligations imposed on Transferee under this Agreement or the Lease; and

(i) Transferee, its officers, directors, shareholders, agents, and employees are released and relieved of any personal liability under the Lease;

(ii) County shall look solely to the interests of Transferee set forth in (a) above, and

(iii) County shall not collect or attempt to collect any judgment out of any other assets or from any general or limited partners or shareholders of Transferee.

13. **Transferee's Performance Obligations.** Subject to the limitations provided in Sections 11 and 12, if a Transferee acquires title to the Mortgage Premises, the Transferee shall perform and recognize all County improvement allowance provisions, all rent-free and rent rebate provisions, and all options and rights of offer, in addition to Lessor's other obligations under the Lease.

14. **Notice.** All notices required by this Agreement shall be given in writing and shall be deemed to have been duly given for all purposes when:

(a) Deposited in the United States mail (by registered or certified mail, return receipt requested, postage prepaid); or

(b) Deposited with a nationally recognized overnight delivery service such as Federal Express or Airborne.

Each notice must be directed to the party to receive it at its address stated below or at such other address as may be substituted by notice given as provided in this section.

The addresses for notification are:

Lender:

EVERBANK
10785 Willows Road NE, Suite 200
Redmond, Washington 98052
Attention: Risk Department (Loan No. 6327136-001)

County:

Economic Development Agency
3403 Tenth Street, Suite 400
Riverside, CA 92501
Attention: Deputy Director of Real Estate

Copies of notices sent to the parties' attorneys or other parties are courtesy copies, and failure to provide such copies shall not affect the effectiveness of a notice given hereunder.

15. Miscellaneous Provisions.

15.1 This Agreement may not be modified orally; it may be modified only by an agreement in writing signed by the parties or their successors-in-interest. This Agreement shall inure to the benefit of and bind the parties and their successors and assignees.

15.2 The captions contained in this Agreement are for convenience only and in no way limit or alter the terms and conditions of the Agreement.

15.3 This Agreement has been executed under and shall be construed, governed, and enforced, in accordance with the laws of the State of California except to the extent that California law is preempted by the U.S. federal law. The invalidity or unenforceability of one or more provisions of this Agreement does not affect the validity or enforceability of any other provisions.

15.4 This Agreement has been executed in duplicate. Lender and County agree that one (1) copy of the Agreement will be recorded.

15.5 This Agreement shall be the entire and only agreement concerning subordination of the Lease and the leasehold estate created by it, together with all rights and privileges of County under it, to the lien or charge of the Loan Documents and shall supersede and cancel, to the extent that it would affect priority between the Lease and the Loan Documents, any previous subordination agreements, including provisions, if any, contained in the Lease that provide for the subordination of the Lease and the leasehold estate created by it to a deed of trust or mortgage. This Agreement supersedes any inconsistent provision of the Lease and shall constitute an approved form for purposes of removing the County's obligation to make direct payment of rents which was in effect prior to the date hereof and which was to be removed by Lender upon delivery of an executed SNDA in recordable form which meets the Lender's requirements; this provision shall not impair or affect Lender's rights under the Loan Documents to impose such a direct payment requirement again in the future.

15.6 This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which copies, taken together, shall constitute but one and the same instrument. Signature and acknowledgment pages may be detached from the copies and attached to a single copy of this Agreement to physically form one original document, which may be recorded without an attached copy of the Lease.

15.7 If any legal action or proceeding is commenced to interpret or enforce the terms of this Agreement or obligations arising out of it, or to recover damages for the breach of the Agreement, the party prevailing in such action or proceeding shall be entitled to recover from the non-prevailing party or parties all reasonable attorneys' fees, costs, and expenses it has incurred.

15.8 Word Usage. Unless the context clearly requires otherwise, (a) the plural and singular numbers will each be deemed to include the other; (b) the masculine, feminine, and neuter genders will each be deemed to include the others; (c) "shall," "will," "must," "agrees," and "covenants" are each mandatory; (d) "may" is permissive; (e) "or" is not exclusive; and (f) "includes" and "including" are not limiting.

[End of text on page; signatures begin on next page.]

Executed on the date first above written.

LENDER:

EVERBANK

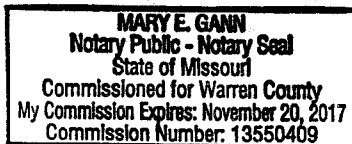
By: Tim Hunter
Name: Tim Hunter
Title: Vice President

STATE OF MISSOURI)
COUNTY OF ST. LOUIS) ss.

LENDER ACKNOWLEDGMENT

On this 13th day of June, 2017, before me, a Notary Public in and for the State of Missouri, personally appeared Tim Hunter, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Vice President of EVERBANK, to be the free and voluntary act and deed of said corporation for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Mary E. Gann
Mary E. Gann
(Print Name)

NOTARY PUBLIC in and for the
State of Missouri, residing

at: 1515 Lafayette St. Webster Mo
My appointment expires: 11/20/17 65383

COUNTY:

COUNTY OF RIVERSIDE

By: _____


JOHN SAVAGLIONE Chairman
Board of Supervisors

ATTEST:

KECIA HARPER-IHEM

Clerk of the Board

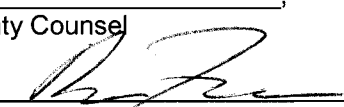
By: _____


Deputy

APPROVED AS TO FORM:

County Counsel

By: _____


Deputy County Counsel

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

§

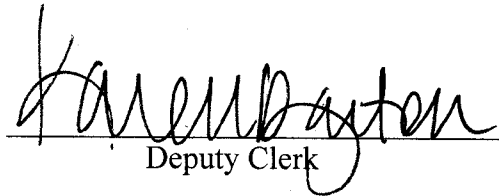
On July 25, 2017, before me, Karen Barton, Board Assistant, personally appeared John Tavaglione, Chairman of the Board of Supervisors, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument; and that a copy of this paper, document or instrument has been delivered to the chairperson.

I certify under the 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

Kecia Harper-Ihem
Clerk of the Board of Supervisors

By:


Deputy Clerk

(SEAL)

Accepted and Agreed To:

LESSOR:

ALCHALEL 2016 LLC,
a California limited liability company

By: [Signature]

Name: ISAC ALCHALEL

Title: MANAGING MEMBER

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 San Diego

On 2nd of June 2017 before me, Trung M. Tran, Notary Public
(insert name and title of the officer)

personally appeared Isaac Alchalel
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 [Signature] (Seal)



EXHIBITS:

Exhibit A - Mortgage Premises

Loan No.: 6327136-001

EXHIBIT A

(12625 South Heacock Street, Moreno Valley, Riverside County, California)

Legal Description of Mortgage Premises:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORENO VALLEY, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP NO, 36752, IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP IN BOOK 238, PAGES 60 THROUGH 62, INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ANY RIGHTS TO WATER IN, ON OR BENEATH CERTAIN LANDS, AS CONVEYED TO EDMONT GARDENS MUTUAL WATER COMPANY BY DEED RECORDED, AUGUST 6, 1973, AS INSTRUMENT NO. 102714, OFFICIAL RECORDS.

APN: 292-100-018