



M E M O R A N D U M
COMMUNITY DEVELOPMENT RESOURCE AGENCY
ADMINISTRATION
County of Placer

TO: Board of Supervisors DATE: March 9, 2021

FROM: Steve Pedretti, Agency Director

BY: Shawna Purvines, Deputy Director
Anne Marie Novotny, Housing Specialist

SUBJECT: Subordination Agreement for County Loan No. SDU0003

ACTION REQUESTED

1. Approve and authorize the Community Development Resource Agency Director to sign the Subordination Agreement for County Loan No. SDU0003.

BACKGROUND

In March 2016, the Board of Supervisors approved a Secondary Dwelling Unit Fee Waiver Program, where property owners could have their fees waived to build a secondary unit on their property if they agreed to deed restrict their secondary dwelling unit for low-income housing. Currently, three property owners have taken advantage of the program.

The owners of Assessor Parcel Number 255-040-028-000 located at 21505 Limestone Way in Foresthill applied under this program in 2019 and received a forgivable loan from the County in the amount of \$8,767.38 to offset their fees. An Affordable Housing Regulatory Agreement, Loan Agreement, and Declaration of Restrictive Covenants (“Regulatory Agreement”) between the County of Placer and the Owners of the subject Property was executed and recorded in July 2019. The loan was secured by a Deed of Trust signed by the Trustors of the Property and further evidenced by a promissory note. A Building Permit (No. BLD19-01985) was issued in September 2020.

To finance the construction of the secondary dwelling unit, the Owners are refinancing their current mortgage. On February 16, 2021, the County received a request from the first lender requesting that Placer County subordinate the County loan to the refinanced first lender loan. Section 8.1 of the Regulatory Agreement (Subordination) states:

“...the County agrees that the County will not withhold consent to reasonable requests for subordination of this Agreement to deeds of trust provided for the benefit of lenders identified in the financing plan approved by the County in connection with the making of the Loan, as such plan may be updated with County approval, provided that the instruments effecting such subordination include reasonable protections to the County in the event of default, including without limitation, extended notice and cure rights.”

County staff recommends approval of the request for subordination as a reasonable request because it allows the property owner to construct the secondary dwelling unit.

CEQA COMPLIANCE

The requested action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15378(a) and 15061(b)(3) since it consists of administrative activities involving government funding mechanisms that does not result in a potentially significant impact on the environment.

FISCAL IMPACT

There is no fiscal impact to the County.

ATTACHMENT

Attachment A: Subordination Agreement

cc: Steve Pedretti – CDRA Director
Karin Schwab – County Counsel
Clayton Cook – Deputy County Counsel

ATTACHMENT A

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

County of Placer
Community Development Resource
Agency
3091 County Center Drive
Auburn, CA 95603
Attn: Housing Specialist

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §27383

Space above this line for Recorder's use.

APN: 255-040-028-000

Property Address: 21505 Limestone Way, Foresthill, CA 92631-9505

SUBORDINATION AGREEMENT

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

This Subordination Agreement (the "**Subordination Agreement**") is dated for reference purposes as of _____, 2021, and is executed by and among Michael J. Cunningham and John Cunningham, (collectively, the "**Owner**"), the County of Placer, a political subdivision of the State of California (the "**County**"), and ACG Funding, ("**Lender**").

RECITALS

A. Owner is the owner of the real property located at 21505 Limestone Way, Foresthill, CA 92631 in unincorporated Placer County, and more particularly described in Exhibit A attached hereto and made a part hereof (the "**Property**").

B. Pursuant to that certain Affordable Housing Regulatory Agreement, Loan Agreement, and Declaration of Restrictive Covenants, dated as of July 15, 2019 and recorded in the Official Records of Placer County ("**Official Records**") on July 29, 2019 as Document No. 2019-0053683-00 (the "**Regulatory Agreement**"), the Property is subject to certain restrictive covenants including but not limited to Subordination (Section 8.1).

C. In connection with Owner's construction of a second unit on the Property, County provided a loan to Owner in the original principal amount of \$8,767.38, (the "**County Loan**") to offset the cost of Fees applicable to the second unit, and Owner executed that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "**County Deed of Trust**") dated July 15, 2019 and recorded in the Official Records on July 29, 2019 as Document No. 2019-0053684-00 against the Property for the benefit of County to secure repayment of the County Loan and Owner's performance under the Regulatory Agreement as further evidenced by an executed Secured Promissory Note dated July 15, 2019.

D. The Regulatory Agreement, the County Deed of Trust, and the Secured Promissory Note are collectively referred to herein as the "**County Documents**."

E. Lender has made, or has agreed to make, a loan to Owner in the principal amount of Two Hundred Ten Thousand Dollars (\$210,000.00) (the "**Lender Loan**"). Owner's obligation to repay the Lender Loan will be evidenced by a promissory note (the "**Lender Note**") made by Owner to the order of Lender in the principal amount of the Lender Loan, and will be secured by a deed of trust (the "**Lender Deed of Trust**") that will be recorded against the Property substantially concurrently herewith. The Lender Note and the Lender Deed of Trust collectively constitute the "**Lender Loan Documents**."

F. County has agreed to subordinate the County Documents to the Lender Deed of Trust on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

AGREEMENT

1. Subordination. The Lender Deed of Trust, and any renewals, modifications, or extensions thereof are unconditionally and will remain at all times, a lien or charge on the Property prior and superior to the County Documents. Notwithstanding the foregoing, Owner and Lender each agree not to amend or modify the Lender Loan Documents to shorten the maturity date, increase the principal amount, or increase the interest rate payable with respect to the Lender Loan without County's prior written consent, and any such amendment or modification for those purposes without County's prior written consent will make the amendment or modification void.

2. Acknowledgments and Agreements of County. County acknowledges and agrees that: (i) Lender would not make the Lender Loan without this Subordination Agreement; and (ii) County intentionally subordinates the County Documents to the lien of the Lender Deed of Trust.

3. Notice and Cure Rights.

3.1 Definitions: For purposes of this Section 3, the following terms shall have the following meanings:

"Cure Period" means a period of ninety (90) consecutive days from the giving of a Default Notice.

"Defaulted Lender" means the party giving a Default Notice.

"Default Notice" means written notice of the default(s) or Event(s) of Default giving rise to a party's right to complete a Foreclosure Remedy.

"Foreclosure Remedy" means the completion of a foreclosure sale of the Property or the recording of a deed-in-lieu of foreclosure with respect to the Property.

"Noticed Defaults" means the noticed default(s) or Event(s) of Default set forth in a Default Notice.

"Notice Party" means the party receiving a Default Notice.

3.2 Notice and Cure Rights.

(a) Notice and Cure Rights of County. Lender agrees that concurrently with Lender's provision of any notice of default (including without limitation any Default Notice) to Owner under the Lender Loan Documents, Lender shall provide a copy of such notice to County at the address specified below. Lender agrees that County shall have the right to cure any default of Owner within the same period of time provided to Owner under the Lender Loan Documents, extended only for the County by a period of ninety (90) days. Lender further agrees that it shall not complete a Foreclosure Remedy unless and until County has first been given a Default Notice, and County has failed to cure the Noticed Defaults within the Cure Period or such longer period provided pursuant to this Section; provided, however, that Lender shall be entitled during the Cure Period to continue to pursue all of its rights and remedies under the Lender Loan Documents, including but not limited to acceleration of the Lender Note (subject to the de-acceleration provisions set forth below), and commencement and pursuit of foreclosure (but not completion of the foreclosure sale). It is the express intent of the parties hereunder that Lender shall have the right to pursue all rights and remedies except completion of a Foreclosure Remedy without liability to County for failure to provide notice to County, and that the Lender's liability hereunder shall be expressly limited to actual damages to County directly caused by the Lender's completion of a Foreclosure Remedy without County receiving the notice and opportunity to cure described above. Except as specifically provided herein, or otherwise agreed in writing, Lender's failure to give any such notice for any reason shall not act to impair or waive any remedy or right of Lender under this Subordination Agreement or any of the Lender Loan Documents.

(b) Owner agrees that it shall provide County with a copy of any notice of default that Owner receives pertaining to any Lender Loan Document within three (3) days following Owner's receipt of any such notice of default.

(c) Notice and Cure Rights of Lender. County agrees that concurrently with County's provision of any notice of default (including without limitation any Default Notice) to Owner under the County Documents, County shall provide a copy of such notice to Lender at the address specified below. County agrees that Lender shall have the right to cure any default of Owner within the same period of time provided to Owner under the County Documents, extended only for Lender by a period of ninety (90) days. County agrees that it shall not complete a Foreclosure Remedy unless and until Lender has first been given a Default Notice, and Lender has failed to cure the Noticed Defaults with the Cure Period; provided, however, that County shall be entitled during the Cure Period to continue to pursue all of its rights and remedies under County Documents including but not limited to commencement and pursuit of foreclosure (but not completion of the foreclosure sale). It is the express intent of the parties hereunder that County shall have the right to pursue all rights and remedies except completion of a Foreclosure Remedy without liability to Lender for failure to provide notice to Lender, and that the County's liability hereunder shall be expressly limited to actual damages to Lender directly caused by the County's completion of a Foreclosure Remedy without Lender receiving the notice and opportunity to cure described above. Except as specifically provided herein, or otherwise agreed in writing, County's failure to give any such notice for any reason shall not act to impair or waive any remedy or right of County under this Subordination Agreement or any of the County Documents.

3.3 Exercise of Cure Rights. With respect to the exercise of the cure rights provided in Section 3.2 above, the following shall apply:

(a) Upon receipt of a Default Notice, Lender and County shall each have the right, but not the obligation, to elect to cure the Noticed Defaults by giving the Defaulted Lender written notice of its intention to cure the Noticed Defaults within the Cure Period and thereafter curing all Noticed Defaults within the Cure Period.

(b) If a cure of all the Noticed Defaults is completed within the Cure Period, the Defaulted Lender will rescind any notice of default recorded and request dismissal of any receiver who has been appointed, after reimbursement of all of Defaulted Lender's costs, including, without limitation, reasonable attorneys' fees and costs.

(c) Following the timely cure of all Noticed Defaults and the payment of all expenses due to the Defaulted Lender with respect to such default, the Defaulted Lender will not exercise its right to accelerate (or will de-accelerate) the amounts due under the Defaulted Lender's loan documents by reason of the Noticed Defaults; provided, however, that nothing herein shall be construed to waive or limit any of Defaulted Lender's rights or remedies as to any uncured Noticed Default, or any subsequent default, by Owner.

(d) Nothing in this Section is intended to limit or modify any covenant, term, or condition contained in the Lender Loan Documents or the County Documents, including, without limitation, any covenant against creating or recording any liens or encumbrances against the Property without Lender's or County's prior written approval, and any acceleration clause in the Lender Deed of Trust and/or the County Deed of Trust.

4. Integration; No Waiver. This Subordination Agreement is the whole and only agreement with regard to the subordination of the liens, claims, and charges of the County Documents to the Lender Deed of Trust. This Subordination Agreement may not be modified or amended except by a written agreement signed by the party against whom enforcement is sought. No waiver shall be deemed to be made by any party of any of its rights hereunder unless the same shall be in writing signed by such party, and each such waiver, if any, shall be a waiver only with respect to the specific matter or matters to which the waiver relates and shall in no way impair the rights of such party or the obligations of Owner to County or Lender in any other respect at any other time.

5. Successors and Assigns. This Subordination Agreement is binding on and inures to the benefit of the legal representatives, successors, and assigns of the parties. Lender's successors and assigns include any financial institution which may now, or hereafter, participate in the Lender Loan.

6. Governing Law. This Subordination Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to the choice of law rules of that State, except to the extent that any of such laws may now or hereafter be preempted by Federal law. The parties hereto each consent to the jurisdiction of any Federal or State court having jurisdiction within the County of Placer, California and submit to venue in such jurisdiction.

7. Notices. All notices given under this Subordination Agreement shall be in writing and be given by personal delivery, overnight receipted courier (such as Airborne, UPS, or Federal Express) that provides written receipt of delivery or by registered or certified United States mail, postage prepaid, sent to the party at its address appearing below its signature. Notices shall be effective upon the first to occur of receipt, when proper delivery is refused, or the expiration of forty-eight (48) hours after deposit in registered or certified United States mail as described above. Addresses for notice may be changed by any party by notice to the other parties in accordance with this Section.

8. Counterparts. This Subordination Agreement may be executed in counterparts, and all counterparts shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGE(S).

IN WITNESS WHEREOF, the parties have executed this Subordination Agreement as of the date first written above.

"COUNTY"

COUNTY OF PLACER, a political subdivision of the State of California

By: _____

Name: _____

Title: _____

Address for notices to County:

County of Placer
Community Development Resource Agency
3091 County Center Drive
Auburn, CA 95603
Attention: Housing Specialist

"OWNER"

Print Name: _____

Print Name: _____

Address for notices to Owner:

21505 Limestone Way
Foresthill, CA 95631-9505

SIGNATURES CONTINUE ON FOLLOWING PAGE

SIGNATURES MUST BE NOTARIZED.

"Lender"

By: _____

Print Name: _____

Title: _____

Address for notices to Lender:

A C G Funding, Inc.
17590 Colima Road
Rowland Heights, CA 91748
Attention: Nick Chang

SIGNATURES MUST BE NOTARIZED.

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)
) ss
County of Placer)

On _____, 20____, before me, _____,
(Name of Notary)

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.

(Notary Signature)

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.

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County of Placer)

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WITNESS my hand and official seal.

(Notary Signature)

Exhibit A

PROPERTY

The land referred to is situated in the unincorporated area of the County of Placer, State of California, and is described as follows:

LOT 526 OF PLAT OF TRACT 144 TODD VALLEY ESTATES UNIT NO. 7, AS SAID LOT IS SHOWN ON THE MAP THEREOF FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PLACER COUNTY, CALIFORNIA ON OCTOBER 27, 1970 IN BOOK "J" OF MAPS, AT PAGE 9.

APN: 255-040-028