

**MOORPARK CITY COUNCIL
AGENDA REPORT****TO: Honorable City Council****FROM: Barry K. Hogan, Deputy City Manager** **DATE: July 9, 2007 (CC Meeting of 07/18/07)****SUBJECT: Consider the Approval of a Subordination Agreement for the Refinancing of Industrial Planned Development Permit No. 2000-10, Casino Self Storage, Located at 875 and 879 West Los Angeles Avenue, at the Request of Asadurian Investments****DISCUSSION**

The subject property is located at the northwest corner of Goldman Avenue and Los Angeles Avenue and is known as Casino Self Storage. The applicant is currently in the process of refinancing the existing loan on the property. This property is subject to a Settlement Agreement which requires that a Subordination Agreement between the property owner and the City be executed, prior to the close of any refinancing. An appraisal was performed by the qualified appraiser and has been reviewed by the City. Before the new loan can be completed, the property owner needs to have the attached Subordination Agreement executed and recorded. Prior to the city's execution of the Agreement, the property owner will need to insure that all outstanding payments under the Settlement Agreement have been made as well as payment of time spent by City staff and City Attorney costs for review of the documents. City records show that approximately \$15,000.00 is outstanding. Upon payment of the reference amount, the Mayor should be authorized to sign the Agreement.

STAFF RECOMMENDATION

- 1) Authorize the Mayor to sign the attached Subordination Agreement once the Settlement Agreement payments and review costs have been paid.
- 2) Authorize the City Manager to sign any future Subordination Agreements authorized by the Settlement Agreement for this project.

ATTACHMENT:

1. Subordination Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

Merrill Lynch Mortgage Lending, Inc.
10877 Wilshire Boulevard, 20th Floor
Los Angeles, California 90024

Attention: Note Department

RE: MANUEL ASADURIAN, JR.

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 SUBORDINATION AGREEMENT (this "Subordination Agreement"), made this ____ day of _____, 2007, by ***MANUEL ASADURIAN, JR.***, owner of the land hereinafter described and hereinafter referred to as "Owner", and the ***CITY OF MOORPARK, CALIFORNIA***, present owner and holder of the deed of trust and note first hereinafter described and hereinafter referred to as "Beneficiary".

W I T N E S S E T H:

WHEREAS, Owner did execute a deed of trust, dated September 16, 2003 to Chicago Title Company, a California corporation, as trustee, encumbering certain real property located in Moorpark, California as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference to secure a note in the sum of \$1,200,000.00, dated April 3, 2003, in favor of Beneficiary which deed of trust was recorded on December 30, 2003 as Instrument No. 03-0476377 in the Official Records of Ventura County, California (the "Beneficiary Deed of Trust"); and

WHEREAS, Owner thereafter executed a deed of trust and note in the sum of \$5,876,934.00, dated July 21, 2003, in favor of Hanmi Bank, payable with interest and upon the terms and conditions described therein, which deed of trust was recorded on December 30, 2003 as Instrument No. 03-0476377 (the "Hanmi Deed of Trust"); and

WHEREAS, Beneficiary executed a Subordination Agreement, dated September 17, 2003, which Subordination Agreement provided that the lien or charge of the Hanmi Deed of Trust would be superior to the lien or charge of the Beneficiary Deed of Trust. Said Subordination Agreement was recorded December 30, 2003 as Instrument No. 03-0476378; and

CC ATTACHMENT

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WHEREAS, Owner executed a modification of the note secured by the Hanmi Deed of Trust, which modification provided as follows:

(a) The date on which all outstanding principal is due and payable (together with any accrued but unpaid interest thereon) is extended from January 21, 2005 to January 21, 2006; and

(b) The original principal amount of said note is being increased from \$5,876,934.00 to \$6,150,000.00;

and in connection with that modification, Beneficiary executed a Subordination Agreement, dated March 16, 2005, which provided, among other things, that the lien or charge of the Hanmi Deed of Trust would be superior to the lien or charge of the Beneficiary Deed of Trust. Said Subordination Agreement was recorded on April 21, 2005 as Instrument No. 20050421-0097286; and

WHEREAS, Owner executed a new note, dated November 9, 2005, secured by the Hanmi Deed of Trust, which note was for a loan amount of \$8,405,000.00; and

WHEREAS, in connection with such new note, Beneficiary executed a Subordination Agreement, which provided, among other things, that the lien or charge of the Hanmi Deed of Trust would be superior to the lien or charge of the Beneficiary Deed of Trust. Said Subordination Agreement was recorded on November 16, 2005 as Instrument No. 2005116-0282030; and

WHEREAS, Owner did or is about to secure a loan from Merrill Lynch Mortgage Lending, Inc. or its affiliate, successor and/or assign ("Lender") and execute a new promissory note not to exceed the amount of \$10,500,000.00 (the "Merrill Lynch Note") and deed of trust (the "Merrill Lynch Deed of Trust"); and

WHEREAS, the Merrill Lynch Note and the Merrill Lynch Deed of Trust replace the \$8,405,000.00 promissory note secured by the Hanmi Deed of Trust; and

WHEREAS, Lender is willing to make said loan provided that the Merrill Lynch Deed of Trust which secures the Merrill Lynch Note shall unconditionally be and remain at all times a lien or charge upon the land hereinbefore described, prior and superior to the lien or charge of the Beneficiary Deed of Trust and provided further that Beneficiary will specifically and unconditionally subordinate the lien or charge of the Beneficiary Deed of Trust to the lien or charge of the Merrill Lynch Deed of Trust; and

WHEREAS, it is to the mutual benefit of the parties hereto that Lender make such loan to Owner; and Beneficiary is willing that the Beneficiary Deed of Trust securing the same shall, when recorded, remain a lien or charge upon said land which is unconditionally prior and superior to the lien or charge of the Beneficiary Deed of Trust;

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NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which 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, providing the Hanmi Deed of Trust is first reconveyed, the Merrill Lynch Deed of Trust, and any renewals or extensions thereof, shall unconditionally be and remain at all times a lien or charge on the property therein described, prior and superior to the lien or charge of the Beneficiary Deed of Trust.

(2) That Lender would not make its loan above described without this Subordination Agreement.

(3) That this Subordination Agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the Beneficiary Deed of Trust to the lien or charge of the Merrill Lynch Deed of Trust insofar as it secures Lender's loan and shall supersede and cancel, but only insofar as would affect the priority between the Beneficiary Deed of Trust and the Merrill Lynch Deed of Trust, any prior agreements as to such subordination, including, but not limited to, those provisions, if any, contained in the Beneficiary Deed of Trust, which provide for the subordination of the lien or charge thereof to another deed or deeds of trust or to another mortgage or mortgages.

Beneficiary declares, agrees and acknowledges that:

(a) It consents to and approves (i) all provisions of the Merrill Lynch Note and the Merrill Lynch Deed of Trust, 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 loan or escrow agreement, is under no obligation or duty to, nor has Lender represented that it will, see to the application of loan 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 provided for in such agreement or agreements, shall not defeat the subordination herein made in whole or in part;

(c) Beneficiary unconditionally waives, relinquishes and subordinates the lien or charge of the Beneficiary Deed of Trust in favor of the lien or charge upon said land of the Merrill Lynch Deed of Trust and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances have been and are being and will be made and, as part and parcel thereof, specific monetary and other ob-

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PARCEL 1:

Parcel A of Parcel Map No. 3836-2, in the City of Moorpark, County of Ventura, State of California, filed in book 42, page 4 of Records of Parcel Maps, in the Office of the County Recorder of Ventura County.

EXCEPTING THEREFROM an undivided one-half interest in and to all oil, gas and other hydrocarbon substances on, in and under said land, as reserved by John I. Cornett, a Married Man, but dealing with his separate property, in deed recorded September 10, 1953, as Document No. 22558, in book 1156, page 97 of Official Records.

PARCEL 2:

A non-exclusive easement for ingress and egress over that portion of land lying within the most Easterly 12 feet 6 inches of the most Southerly 109 feet, of the land described as follows:

Beginning at a point of the centerline of Los Angeles Avenue, 60 feet wide, distant along said centerline South $89^{\circ} 59' 15''$ East 425.78 feet from the Southwesterly corner of the land described in that certain Quitclaim Deed to Dora Spencer, recorded August 16, 1949, as Document No. 13600 in book 886, page 349 of Official Records; thence along said centerline,

1st: North $89^{\circ} 59' 15''$ West 120 feet; thence,

2nd: North $0^{\circ} 04'$ East 180 feet; thence parallel with said centerline of Los Angeles Avenue,

3rd: South $89^{\circ} 59' 15''$ East 120 feet to the intersection with a line which bears North $0^{\circ} 04'$ East from said Point of Beginning; thence along said last mentioned line,

4th: South $0^{\circ} 04'$ West 180 feet to the Point of Beginning.

PARCEL 3:

A non-exclusive easement for ingress and egress, being the Easterly 12.50 feet of the land described as follows:

Beginning at a point on the centerline of Los Angeles Avenue, 60 feet wide, distant along said centerline South $89^{\circ} 59' 15''$ East 425.78 feet from the Southwesterly corner of the land described in that certain Quitclaim Deed to Dora Spencer, recorded August 16, 1949, as Document No. 13600, in book 886, page 349 of Official Records; thence along said centerline.

1st: North $89^{\circ} 59' 15''$ West 120 feet; thence,

- 2nd: North 0° 04' East 180 feet; thence, parallel with said centerline of Los Angeles Avenue;
- 3rd: South 89° 59' 15" East 120 feet to the intersection with a line which bears North 0° 04' East from said Point of Beginning; thence along said last mentioned line,
- 4th: South 0° 04' West 180 feet to the Point of Beginning.

EXCEPT the Southerly 109.00 feet thereof.

ALSO EXCEPT the interest in the Southerly 30 feet of said land lying within the land described in the Quitclaim Deed to County of Ventura, recorded June 6, 1889, in book 28, page 190 of Deeds.

PARCEL 4

Parcels 2, 3 and 4 of Parcel Map No. 3836-1, in the City of Moorpark, County of Ventura, State of California, as per map filed in book 37, pages 70 and 71 of Parcel Maps, in the Office of the County Recorder of said County.

EXCEPT an undivided one-half interest in and to all oil, gas and other hydrocarbon substances on, in and under said land, as reserved by Dora Spencer, a Married Woman, but dealing with her separate property, in deed recorded September 10, 1953 as Document No. 22554, in book 1156, page 92, Official Records, as to a portion of said land, and as reserved by John I. Cornett, a Married Man, but dealing with his separate property, in deed recorded September 10, 1953 as Document No. 22558, in book 1156, page 97, Official Records, as to the remainder of said land.

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