

Richardson, Michael

From: Michele Kerrigan <mkerrigan@danco-group.com>
Sent: Wednesday, June 15, 2022 2:44 PM
To: Richardson, Michael
Cc: Dan Johnson; Ford, John; Russell, Robert
Subject: RE: Proposed subordination agreement

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Hi Michael,

Thank you for pushing this through to the Board. Please see below responses in [Blue](#). Let me consult with the bank on the items regarding the subordination agreement itself, and I will get back to you tomorrow.

Best,

Michele Kerrigan
Asset Management

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From: Richardson, Michael <MRichardson@co.humboldt.ca.us>
Sent: Tuesday, June 14, 2022 9:25 PM
To: Dan Johnson <Djohnson@danco-group.com>
Cc: Ford, John <JFord@co.humboldt.ca.us>; Russell, Robert <RRussell@co.humboldt.ca.us>
Subject: RE: Proposed subordination agreement

Hi Dan,

County Counsel is advising us the agreement needs to be signed by the Board of Supervisors. John asked me to work with you to get answers to the below questions which I'll use for discussion section of the staff report. He asked me to place it as a consent item on the earliest date possible, which is July 12 if you can provide me with adequate responses to the below questions by mid week next week.

Responses to the following questions will be used to frame the staff report discussion:

- What is the purpose of the subordination agreement? Has the lender not already provided a \$12 million loan without the subordination agreement?

[No, the lender is holding back \\$2 million until the County signs the subordination agreement.](#)

“WHEREAS, Trustor has executed a deed of trust dated April 4, 2022 in favor of Lender which deed of trust was recorded on April 22, 2022 in Humboldt County, California as Instrument No. 2022-007849 (the "Lender's Lien") covering the real

property as described in Exhibit A (the "Property") attached hereto and made a part hereof to secure a note in favor of Lender dated April 4, 2022 in the original principal amount of \$12,000,000.00”

- Which parcels are subordinated? And which parcels will remain unsubordinated?

Below are the properties subordinated to Pacific Western Bank. There are several properties not being subordinated, most notably the 35 acres currently in escrow with the Harbor Commission for \$3 million, the 17 acre business park, and 200 paper lots for the construction of new homes.

852 Vance Avenue; 3, 5, 7, 9, 11, 13, 15, 16, 14, 12, 10, 8, 6, 4 and 2 Fenwick Avenue; 111, 109, 108, 21, 19, 15, 13, 11 N. Bayview Avenue; 23 Bayview Avenue; 3 and 5 Rideout Street; 760, 756, 752, 759, 763, 771, 795, 799, 772, 776, 780, 779, 775 Vance Avenue; 92, 80, 68, 54, 36, 131, 139, 147 and 161 Samoa Court; 3, 4, and 35 Murphy Avenue; 117, 119, 123, 125, 127, 129, 126, 128, 130, 132, 134, 131, 122, 120, 116, 112, 110, 104 & 102 Sunset Avenue; 50, 45, 11, 21, 10 Sunset Circle; 131, 139 and 22 Sunset Extension; and 2 Cutten Street, Samoa, CA 95564.

- How much collateral the County would still have after this agreement? Would it be sufficient to recover all or some of the Brownfield cleanup monies?

Certainly. The 35 acres currently in escrow for \$3 million would suffice as collateral and is sufficient to recover the County loan.

- We need to get information documenting this subordination agreement would not put the County’s Brownfield Cleanup Program at risk because insufficient collateral would remain if the Lender had to enforce this agreement for all twelve million dollars. Will the money borrowed here will help with the cleanup?

Yes, the remaining cleanup is temporary funded by the money borrowed as part of the cost of construction, but ultimately will be paid for by the sale of the homes.

- The subordination agreement references the 2014 loan, but not the subsequent loans. Is that on purpose? Would the subsequent additional monies loaned still take priority? Or were notices regarding that just not recorded and so the lender isn’t aware?

No, the intention is to include all of the County loans. Would you be able to send over the loan agreements and amendments so we can have the bank take a look at it?

Regarding the subordination agreement itself:

- See Beneficiary’s Representations and Warranties, subdivision (D). The County is not in a place to comply with this condition: “Beneficiary has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Beneficiary agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Beneficiary's risks under this Subordination, and Beneficiary further agrees that Lender shall have no obligation to disclose to Beneficiary information or material acquired by Lender in the course of its relationship with Borrower.” How do you propose we ensure compliance with this requirement?
- The Attorneys’ Fees clause is problematic. It puts that on the Beneficiary (County) instead of the Trustor. “Beneficiary also will pay any court costs, in addition to all other sums provided by law.” The County’s Risk Management officers may recommend the Board of Supervisors not enter into this agreement under these terms. This paragraph will need to be modified to eliminate the requirement the County will have to pay any court costs, in addition to all other sums provided by law.

Please let me know if I can clarify any of this or otherwise assist getting this agreement in front of the Board of Supervisors.

Thanks,

- Michael R.

From: Dan Johnson <Djohnson@danco-group.com>

Sent: Tuesday, June 14, 2022 8:16 AM

To: Richardson, Michael <MRichardson@co.humboldt.ca.us>

Cc: Ford, John <JFord@co.humboldt.ca.us>; Russell, Robert <RRussell@co.humboldt.ca.us>

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