

*City of Brisbane, as Successor Agency of the
Redevelopment Agency of the City of Brisbane
Agenda Report*

TO: Mayor and City Council

FROM: Hal Toppel, City Attorney

SUBJECT: Approval of Subordination Agreement
for a First Time Homebuyer Loan

DATE: For Council Meeting on August 27, 2012

RECOMMENDATION:

Authorize the City Manager to execute a Subordination Agreement on a First Time Homebuyer loan that was made by the Redevelopment Agency.

BACKGROUND:

As part of its First Time Homebuyer Program to provide financial assistance to low and moderate income buyers in the purchase of their first home, the Brisbane Redevelopment Agency made second mortgage loans to qualified borrowers. The borrowers also obtained a regular home loan, typically from a commercial bank, which had priority over the Agency's loan. The Agency's loan documents specifically allowed the borrowers to refinance their first loan under certain conditions, in which case the Agency agreed to subordinate the lien of its deed of trust to the lien of the new bank loan, thereby remaining in second position and giving the new loan the same priority as the loan which had been refinanced.

DISCUSSION:

One of the homebuyers who received an Agency loan now wishes to refinance their first mortgage in order to lower their interest rate and monthly payments. They have satisfied all of the conditions for subordination by the Agency, as set forth in the Agency's Resale Restriction Agreement. However, the Agency no longer exists. This is clearly an "enforceable obligation" of the Agency, but unlike the other enforceable obligations listed in the ROP Schedules approved by the Oversight Board, this is a contractual obligation to perform a certain act (i.e. subordinate its loan) rather than a financial obligation to pay money. The actual party to the subordination agreement would be the Successor Agency, as the successor in interest to the Brisbane Redevelopment Agency.

Although this is the performance of a non-financial obligation, we believe the action still needs to be formally authorized by the Successor Agency at this meeting and approved by the Brisbane Oversight Board at its meeting on September 12, 2012.

ATTACHMENTS:

Proposed Subordination Agreement.



Hal Toppel, City Attorney



Clay Holstine, City Manager

RECORDING REQUESTED BY:

City of Brisbane

AFTER RECORDATION, MAIL TO:

City of Brisbane
50 Park Place
Brisbane, CA 94005

*This instrument benefits City of Brisbane only.
No Fee Required.*

THIS SPACE FOR RECORDER'S USE

APN 007-271-080

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 AGREEMENT, made this ____ day of _____, 2012, by **NOME TIATIA** and **JESSICA ANWEN TIATIA**, owners of the land hereinafter described and hereinafter referred to as "Owner," and **THE CITY OF BRISBANE AS SUCCESSOR AGENCY TO THE BRISBANE REDEVELOPMENT AGENCY**, present owner and holder of the deed of trust and note first hereinafter described and hereinafter referred to as "Beneficiary;"

WITNESSETH:

THAT WHEREAS, Owner did execute a deed of trust, dated January 11, 2010, to OLD REPUBLIC TITLE COMPANY, as trustee, covering the real property located in the City of Brisbane, County of San Mateo, State of California, commonly known as 343 Mariposa Street, and more particularly described in Exhibit "A" attached hereto and made a part hereof, to secure a note in the sum of \$121,500, dated January 11, 2010, in favor of Beneficiary, which deed of trust was recorded as Document No. 2010-003787, on January 14, 2010, Official Records of said county; and

WHEREAS, pursuant to state law, the Brisbane Redevelopment Agency was dissolved and all of its enforceable obligations were assumed by The City of Brisbane as Successor Agency to the Brisbane Redevelopment Agency; and

WHEREAS, Owner has executed, or is about to execute, a deed of trust and note in the sum of \$_____, in favor of _____, hereinafter referred to as "Lender," payable with interest and upon the terms and conditions described therein, which deed of trust is to be recorded concurrently herewith; and

WHEREAS, it is a condition precedent to obtaining said loan that said deed of trust last above mentioned 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 deed of trust first above mentioned; and

WHEREAS, lender is willing to make said loan provided the deed of trust securing the same is a lien or charge upon the above described property prior and superior to the lien or charge of the deed of trust first above mentioned and provided that Beneficiary will specifically and

unconditionally subordinate the lien or charge of the deed of trust first above mentioned to the lien or charge of the deed of trust in favor of Lender; 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 deed of trust securing the same shall, when recorded, constitute a lien or charge upon said land which is unconditionally prior and superior to the lien or charge of the deed of trust first above mentioned.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration 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 said deed of trust securing said note in favor of Lender, 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 deed of trust above mentioned.
- (2) That Lender would not make its loan above described without this subordination agreement.
- (3) That this agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the deed of trust first above mentioned to the lien or charge of the deed of trust in favor of Lender above referred to and shall supersede and cancel, but only insofar as would affect the priority between the deeds of trust hereinbefore specifically described, any prior agreement as to such subordination including, but not limited, those provisions, if any, contained in the deed of trust first above mentioned, 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) Lender, in making disbursements to Owner, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such 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;
- (b) Beneficiary intentionally and unconditionally waives, relinquishes and subordinates the lien or charge of the deed of trust first above mentioned in favor of the lien or charge upon said land of the deed of trust in favor of Lender above referred to and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination; and

(c) An endorsement has been placed upon the note secured by the deed of trust first above mentioned that said deed of trust has by this instrument been subordinated to the lien or charge of the deed of trust in favor of Lender above referred to.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS SUBORDINATION AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT THERETO.

OWNER:

BENEFICIARY:

NOME TIATIA

THE CITY OF BRISBANE AS
SUCCESSOR AGENCY TO THE
BRISBANE REDEVELOPMENT AGENCY

JESSICA ANWEN TIATIA

By: _____
CLAY HOLSTINE, City Manager

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)

On _____, before me _____,
Notary Public, personally appeared NOME TIATIA and JESSICA ANWEN TIATIA, proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signature on the instrument the persons, or the entity upon behalf of which the persons 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 _____

STATE OF CALIFORNIA
COUNTY OF SAN MATEO

On _____, before me _____,
Notary Public, personally appeared CLAY HOLSTINE, 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.

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 _____

EXHIBIT "A"
Legal Description

ORDER NO. : 0216011488-KL

EXHIBIT A

The land referred to is situated in the County of San Mateo, City of Brisbane, State of California, and is described as follows:

Lot 38 in Block 6, as shown on that certain Map entitled "Amended Map of Subdivision Nos. 1, 2 & 3 of City of Visitacion - California", filed in the Office of the County Recorder of San Mateo County, State of California, on October 14, 1908 in Book 6 of Maps at page(s) 45.

APN: 007-271-080

JPN: 007-027-271-08A