

**Carson City
Agenda Report**

Date Submitted: April 27, 2011

Agenda Date Requested: May 5, 2011
Time Requested: Consent

To: Mayor and Supervisors

From: City Manager

Subject Title: Action to authorize the Mayor to sign a Subordination Agreement necessary to permit the Brewery Arts Center to obtain funding to consolidate debt. The Subordination Agreement would result in Carson City's security interests in the property becoming subject to and of lower priority than the Lien of some other or later security instrument.

Staff Summary: The Brewery Arts Center is in the process of obtaining financing to consolidate their debts. To obtain this financing, they are asking that the City subordinate the Deed of Trust dated October 12, 2001 and a Redevelopment Authority Lien and Agreement recorded February 25, 2011.

Type of Action Requested: (check one)

Resolution

Ordinance

Formal Action/Motion

Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to authorize the Mayor to sign a Subordination Agreement necessary to permit the Brewery Arts Center to obtain funding to consolidate debt. The Subordination Agreement would result in Carson City's security interests in the property becoming subject to and of lower priority than the Lien of some other or later security instrument.

Explanation for Recommended Board Action: The Brewery Arts Center has analyzed its financial situation and has determined that the consolidation of debt with a more favorable loan is appropriate. The amount of the loan is \$300,000.00. To obtain financing requires that the City subordinate its security instruments.

Applicable Statute, Code, Policy, Rule or Regulation: None

Fiscal Impact: N/A

Explanation of Impact: N/A

Funding Source: N/A

Alternatives: Do not approve the Subordination Agreement

Supporting Material: Subordination Agreement

Prepared By: Lawrence A. Werner, P.E., P.L.S.

Reviewed By: _____ Date: _____
(Department Head)
_____ Date: 4/28/11
(City Manager)
_____ Date: 4/28/11
(District Attorney)
_____ Date: 4/27/11
(Finance Director)

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____ _____

(Vote Recorded By)

A.P.N.: 003-206-01 and 003-206-02
Escrow No.: 1096211-LI

RECORDING REQUESTED BY

Northern Nevada Title Company
307 W Winnie Lane, Suite 1
Carson City, NV 89703

**MAIL TAX STATEMENTS AND WHEN
RECORDED, MAIL TO**

Brewery Arts Center, a Nevada Corporation
501 W. King St.
Carson City, NV 89703

THIS SPACE FOR RECORDER'S USE ONLY

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 **21st of April, 2011**, by Brewery Arts Center, a Nevada Corporation, owner of the land hereinafter described and hereinafter referred to as "Owner", and Consolidated Municipality of Carson City, present owner and holder of the deed of trust and note first hereinafter described and hereinafter referred to as "Beneficiary":

WITNESSETH

THAT WHEREAS, Owner has executed a Deed of Trust, dated October 12, 2001, to Stewart Title of Carson City, as trustee, covering:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

to secure a note in the sum of \$225,000.00, dated October 12, 2001, in favor of Beneficiary, which Deed of Trust was recorded on October 15, 2001 as Document #267895 in Carson City; and

WHEREAS, Owner has executed, or is about to execute, a Deed of Trust and note in the sum of \$ _____, dated _____ in favor of _____ herein after referred to as "Lender", payable with interest and upon the terms and conditions described therein, which Deed of Trust will record concurrently herewith on _____ as Document # _____ in Carson City, NV; and

WHEREAS, it is a condition precedent to obtaining said loan from Lender 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 upon the land hereinbefore described, prior and superior to the lien or charge of the deed of trust first above mentioned; 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 first above mentioned.
2. That Lender would not make its loan above described without this subordination agreement.
3. That this agreement shall supersede and cancel those provisions, if any, contained in any and all other agreements, including but not limited to the deed of trust first above mentioned, second loan or escrow agreements between the parties hereto, with regard to the subordination of the lien or charge of the deed of trust first above mentioned to the lien or charge of said deed of trust in favor of Lender, which provisions are inconsistent or contrary to the provisions herein.

Beneficiary declares, agrees and acknowledges that

- a. He consents to and approves (i) all provisions of the note and deed of trust in favor of Lender above referred to, 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 Lender's loan;
- b. Lender in making disbursements pursuant to any such agreement 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;
- c. He 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 paid 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.

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.

Carson City Consolidated Municipality of Carson
City

BY:

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

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

(CLTA SUBORDINATION FORM "A")

STATE OF NEVADA)
) ss.
COUNTY OF _____)

On this _____ day of _____, _____, personally appeared before me a Notary Public in and for
_____ County, State of Nevada,
_____ known to
me to be the person_ described in and who executed the foregoing instrument, who acknowledged to me that
he executed the some freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

NOTARY PUBLIC

STATE OF NEVADA)
) ss.
COUNTY OF _____)

On this _____ day of _____, _____, personally appeared before me a Notary Public in and for
_____ County, State of Nevada,
_____ known to
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he executed the some freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

NOTARY PUBLIC

EXHIBIT "A"

All that certain real property situated in the County of Carson City, State of Nevada, described as follows:

Parcel 1

All of Block 10 of Sears, Thompson and Sears Subdivision, filed in the Office of the County Recorder of Carson City, Nevada.

EXCEPTING THEREFROM that property described in instrument recorded December 30, 1992 as File No. 138487 Official Records of Carson City, Nevada.

Assessor's Parcel No. 003-206-01

Parcel 2

That portion of Block 10 of the Sears, Thomson and Sears Subdivision, filed in the Office of the County Recorder of Carson City being more particularly described in instrument recorded December 30, 1992 as File No. 1138487 Official Records of Carson City, Nevada.

Assessor's Parcel No. 003-206-02