



City of Grand Island

Tuesday, April 23, 2019

Council Session

Item G-12

#2019-145 - Approving Subordination Request for FAmos Construction

Staff Contact: Amber Alvidrez

Council Agenda Memo

From: Amber Alvidrez, Community Development

Council Meeting: April 23, 2019

Subject: Approving Subordination Agreement for 116/118 West 3rd Street Grand Island, Nebraska

Presenter(s): Amber Alvidrez, Community Development Administrator

Background

The City of Grand Island has a Deed of Trust filed on property owned by FAMOS CONSTRUCTION, INC a Nebraska corporation and THE CHOCOLATE BAR, INC., a Nebraska corporation located at 116/118 West 3rd Street, in the amount of \$159,200. On May 25, 2016, Community Development Block Grant funds in the amount of \$159,200 were loaned to FAMOS CONSTRUCTION INC., a Nebraska Corporation and THE CHOCOLATE BAR, INC, a Nebraska Corporation to assist in the revitalization of downtown. The legal description is:

THE WESTERLY TWO THIRDS (W 2/3 OF LOT SIX (6), IN BLOCK FIFTY FIVE (55), OF THE ORIGINAL TOWN, NOW CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA.

The owner is requesting permission from the City to subordinate to the new Loan amount and accept and remain in third position. The equity in the property is in excess of the lien amounts held by both the City and the bank.

Discussion

A new lien in the amount of \$60,000 with Pinnacle Bank would by law be junior in priority to the City's lien; however, Pinnacle Bank has asked the City to subordinate its Deed of Trust to the new Deed of Trust.

The property's appraised value is \$1,066,594.91 and is sufficient to secure the loan of \$125,000 from Pinnacle Bank, a second construction loan of \$60,000 from Pinnacle Bank and the City's note of \$159,200.

ALTERNATIVES

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Approve the Subordination Agreement
2. Refer the issue to a Committee
3. Postpone the issue to a later date
4. Take no action on the issue

RECOMMENDATION

Community Development Division recommends that the Council approves the Subordination Agreement with Home Federal Savings and Loan placing the City in the third position to the new Deed of Trust.

Sample Motion

Move to recommend approval of the Subordination Agreement with Pinnacle Bank, placing the City in the Third position to the new Deed of Trust.

SUBORDINATION AGREEMENT

COMES NOW the City of Grand Island, Nebraska, secured party/beneficiary and hereby partially subordinates its trust deed/real estate lien recorded May 25, 2016, on the following described real estate:

THE WESTERLY TWO THIRDS (W 2/3) OF LOT SIX (6), IN BLOCK FIFTY FIVE (55) OF THE ORIGINAL TOWN, NOW CITY OF GRAND ISLAND, HALL COUNT, NEBRASKA.

It is the intent of this Agreement that the trust deed for amounts loaned by Pinnacle Bank to FAmos Construction Inc., a Nebraska corporation and The Chocolate Bar Inc., a Nebraska corporation (Borrower) that was filed March 29, 2019 as Instrument Number 201901813 shall be superior to the trust deed/real estate lien of the City of Grand Island, its successors and assigns recorded September 29, 2016, up to the amount of \$175,000.00 plus interest and amounts advanced to protect the collateral. Thereafter, the City of Grand Island's lien shall have priority. It is further understood that this subordination shall include all current obligations, extensions, renewals, advances or modifications made by the City of Grand Island, Nebraska to Borrowers which is secured by the trust deed/real estate lien recorded September 29, 2016 as Document Number 201606457 in the records of the Register of Deeds of Hall County, Nebraska. Nothing in this Subordination Agreement is intended as a promise to provide financing or make advances to Borrowers by the City of Grand Island, Nebraska and it is not the intention of the City of Grand Island, Nebraska to warrant or guarantee the obligations of Borrowers but merely to partially subordinate its lien interests under the instrument recorded at Document Number 201606457. It is understood that Pinnacle Bank intends to lend funds to Borrowers but that the subordinated amount is not to exceed \$175,000.00 plus interest and amounts advanced to protect the collateral.

Nothing in this instrument is intended to relieve Borrowers of their obligation to the City of Grand Island, Nebraska or to subordinate any other lien interests including, but not limited to, real estate taxes and special assessments.

Dated: _____

City of Grand Island, Nebraska

By _____
Roger G. Steele, Mayor

STATE OF NEBRASKA)
)ss.
COUNTY OF HALL)

The foregoing instrument was acknowledged before me on _____, 2019, by Roger G. Steele, Mayor of the City of Grand Island, Nebraska.

Notary Public

RESOLUTION 2019-145

WHEREAS, the City of Grand Island, is the lender and secured party of a Deed of Trust dated May 25, 2016 and recorded on September 29, 2016, as Instrument No.201606457, in the amount of One-Hundred and Fifty-Nine Thousand and Two-Hundred Dollars and zero Cents.(\$159,200), secured by property located at 116/118 West Third Street and owned by FAMOS CONSTRUCTIONS INC., a Nebraska Corporation and THE CHOCOLATE BAR INC, a Nebraska corporation, said property being described as follows:

THE WESTERLY TWO THIRDS (W 2/3) OF LOT SIX (6), IN BLOCK FIFTY FIVE (55), OF THE ORIGINAL TOWN, NOW CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA.

WHEREAS, FAMOS CONSTRUCTION INC, a Nebraska corporation, and THE CHOCOLATE BAR, a Nebraska corporation wishes to execute a Deed of Trust and Note in the amount of \$60,000 with Pinnacle Bank, to be secured by the above-described real estate conditioned upon the City subordinating its Deed of Trust to their lien priority; and

WHEREAS, the value of the above-described real estate is sufficient to adequately secure both loans.

WHEREAS, the requested subordination of the City's lien priority is in the best interests of all parties.

WHEREAS, the City Attorney's office has reviewed and approved the proposed agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized and directed to execute an agreement subordinating the lien priority of the above described Deeds of Trust from FAMOS CONSTRUCTION INC., a Nebraska corporation and THE CHOCOLATE BAR INC., a Nebraska corporation to the City of Grand Island, as beneficiary to that of the new loan and Deed of Trust of Pinnacle Bank, Beneficiary, as more particularly set out in the subordination agreement.

Adopted by the City Council of the City of Grand Island, Nebraska, April 23, 2019.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
April 19, 2019	☐ City Attorney