



City of Grand Island

Tuesday, July 9, 2019
Council Session/Budget Work Session

Item G-11

#2019-211 - Approving Sale of the Business Assets of The Chocolate Bar, Inc. and Sharena Anson to EPS June, Co. and the Guaranty of Promissory Note o/b/o EPS June, Co. and Perry Schutz

Staff Contact: Jerry Janulewicz

Council Agenda Memo

From: Jerry Janulewicz, City Attorney

Meeting: July 9, 2019

Subject: The Chocolate Bar, Inc.

Presenter(s): Jerry Janulewicz, City Attorney

Background

The City of Grand Island (“City”) and Downtown Business Improvement District (“BID”) entered into a Downtown Revitalization Fund Forgivable Loan Agreement (the “Agreement”) with The Chocolate Bar, Inc. whereby the City holds a promissory note secured by a Deed of Trust on certain real estate of The Chocolate Bar, Inc. and FAMous Construction, Inc. The Agreement and promissory note provide for annual reduction of principal due over five annual periods contingent upon continued operation of the Chocolate Bar restaurant. The Chocolate Bar, Inc., desires to sell its business assets to EPS, June, Co., a Nebraska corporation, and requests that the City and BID consent to such sale. On July 1, 2019, the BID granted consent to the proposed sale.

EPS, June, Co., and Perry Schutz executed a guarantee of the above-mentioned promissory note in order to assure City and BID of the continued operation of a restaurant at the location of the Chocolate Bar restaurant.

Discussion

The Guaranty of Promissory Note by EPS, June, Co., and Perry Schutz does not limit or change the terms of the promissory note and deed of trust executed by The Chocolate Bar, Inc. and by FAMous Construction, Inc. Both entities remain liable on the promissory note secured by the deed of trust held by the City. The Guaranty operates to provide the City with additional entities to look to for payment of the promissory note should operation of the restaurant cease prior to the five-year loan forgiveness period provided by the Agreement.

The proposed resolution, if approved by Council, approves the sale of the business assets of The Chocolate Bar, Inc. and of Sharena D. Anson to EPS June, Co. and approves the Guaranty of Promissory Note executed on behalf of EPS June, Co. and by Perry Shutz.

Alternatives

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

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the resolution.

Sample Motion

Move to approve the Resolution.

GUARANTY OF PROMISSORY NOTE

EPS, June, Co., a Nebraska corporation (referred to herein as the “Guarantor”), hereby irrevocably and unconditionally, guarantees to the City of Grand Island, a municipal corporation, and its successors and assigns (“Lender”), the prompt payment of the principal of, interest on, and all other amounts due under that certain Secured Promissory Note, dated September 27, 2016, made by FAMous Construction, Inc. and The Chocolate Bar, Inc. (individually and jointly referred to herein as the “Company”) in favor of Lender in the original principal amount of \$159,200.00 (such promissory note is hereinafter referred to as the “Secured Promissory Note”), (ii) the full and prompt performance of all obligations of the Company to Lender under the aforesaid Secured Promissory Note, and the terms of the Agreement by and among the City of Grand Island, the Downtown Business Improvement District,, and The Chocolate Bar dated June 10, 2015, and (iii) Lender’s cost of collection and/or enforcing its rights and remedies (including but not limited to reasonable attorneys’ fees and disbursements) under the aforesaid Secured Promissory Note, this guaranty or any collateral security therefor. This Guarantee is given in consideration of Lender’s consent to sale of business assets of The Chocolate Bar, Inc. to EPS, JUNE, CO.

Except for the limitation of Guarantor’s liability hereunder as aforesaid, this Guaranty is unconditional and absolute, the Guarantors each hereby waive notice of any default by Company, and Lender may proceed directly against Guarantor in the event of a default by Company under either of the aforesaid Secured Promissory Note or any collateral security therefor without being required to proceed first against Company. This Guaranty shall be governed by the laws of the State of Nebraska and may not be orally modified or released, but only by a written instrument signed by both the Lender and the Guarantor.

This Guaranty shall not be impaired, released or terminated in the event of (i) the sale or transfer of the Company, any of the Company’s assets, or any voting equity securities in the Company, (ii) the release or discharge of Company in any creditors’, receivership, bankruptcy or other proceedings, (iii) the impairment, limitation or modification of the liability of Company in bankruptcy, or of any remedy for the enforcement of Company’s liability under the aforesaid Secured Promissory Note or any collateral security therefor resulting from the operation of any present or future provision of Title 11 of the United States Code or other statute or from the decision of any court, (iv) rejection or disaffirmance of the aforesaid Secured Promissory Note or any collateral security therefor in any such proceedings, (v) assignment or transfer of the aforesaid Secured Promissory Note or any collateral security therefor by Company, (vi) disability or other defense of Company, or (vii) dissolution or liquidation of Company or the cessation from any cause whatsoever of the business or liability of Company, but in any such event this Guaranty shall remain in full force and effect until all payments and obligations of Company to Lender have been fully paid and/or performed.

This Guaranty shall be binding on the Guarantor and its successors and assigns, and shall at all times

inure to the benefit of the Lender and its successors and assigns.

DATED: July ___, 2019.

EPS, June, Co, a Nebraska corporation, Guarantor

By: _____
Perry Schutz, Guarantor

ACCEPTED AND AGREED TO as of
July 9, 2019

City of Grand Island, Lender

By: _____
Roger G. Steele, Mayor

[attest]

RaNae Edwards, City Clerk

RESOLUTION 2019-211

WHEREAS, the City of Grand Island ("City") and Downtown Business Improvement District ("BID") entered into a Downtown Revitalization Fund Forgivable Loan Agreement (the "Agreement") with The Chocolate Bar, Inc. whereby the City holds a promissory note secured by a Deed of Trust on certain real estate of The Chocolate Bar, Inc. and FAmous Construction, Inc.; and

WHEREAS, the Agreement and promissory note provide for annual reduction of principal due over five annual periods contingent upon continued operation of the Chocolate Bar restaurant; and

WHEREAS, The Chocolate Bar, Inc., desires to sell its business assets to EPS, June, Co., a Nebraska corporation, and requests that the City and BID consent to such sale; and

WHEREAS, BID granted consent to the proposed sale: and

WHEREAS, EPS, June, Co., executed a guarantee of the above-mentioned promissory note in order to assure City and BID of the continued operation of a restaurant at the location of the Chocolate Bar restaurant.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, the sale of the business assets of The Chocolate Bar, Inc, and of Sharena D. Anson to EPS, June, Co. and the Guaranty of Promissory Note executed on behalf of EPS, June, Co. are hereby each approved.

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Adopted by the City Council of the City of Grand Island, Nebraska, July 9, 2019.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
July 5, 2019	☐ City Attorney