



# City of Grand Island

Tuesday, October 22, 2019

Council Session

## Item G-10

**#2019-319 - Approving Subordination Agreement - FAmos Construction**

Staff Contact: Amber Avidrez

# **Council Agenda Memo**

**From:** Amber Alvidrez, Community Development

**Council Meeting:** October 22, 2019

**Subject:** Approving Subordination Agreement for 116/118  
W 3<sup>rd</sup> 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 Third St., 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 2/30 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. On April 23, 2019 Council approved subordination request although wording within the agreement has since changed requiring council approval.

### **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 Pinnacle Bank 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 September 29, 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 as documented in instrument number 201901813 as filed on March 29, 2019 to FAmos Construction Inc., a Nebraska corporation and The Chocolate Bar Inc., a Nebraska corporation (Borrower) shall be superior to the trust deed/real estate lien of the City of Grand Island, its successors and assigns recorded in instrument number 201606457 filed on 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 Instrument 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 filed September 29, 2016. It is understood that Pinnacle Bank as recorded in instrument Number 201901813 filed on March 29, 2019 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

STATE OF NEBRASKA     )  
                                      )ss.  
COUNTY OF HALL         )

By \_\_\_\_\_  
Roger G. Steele, Mayor

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

\_\_\_\_\_  
Notary Public

RESOLUTION 2019-319

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.

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Adopted by the City Council of the City of Grand Island, Nebraska, October 22, 2019.

\_\_\_\_\_  
Roger G. Steele, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	☐ _____
October 18, 2019	☐ City Attorney