



City of Grand Island

Tuesday, September 13, 2005

Council Session

Item G25

**#2005-258 - Approving Downpayment Assistance Program
Subordination Agreement (David M. Job)**

Staff Contact: Joni Kuzma

Council Agenda Memo

From: Joni Kuzma, Community Development

Meeting: September 13, 2005

Subject: Subordination Agreement for House Purchased under CDBG Down Payment Assistance Program

Item #'s: G-25

Presenter(s): Joni Kuzma, Community Development Specialist

Background

The City of Grand Island has a real estate lien on property owned by David M. Job at 122 E. 8th Street, in the amount of \$15,255.00. On November 13, 1998, down payment funds in the amount of \$15,255.00 were loaned to David M. Job, a single person, to assist in the purchase of a home in the Community Development Block Grant Project area. The legal description is: Lot Eight (8), Block One Hundred Thirty Six (136), Union Pacific Railway Second Addition to the City of Grand Island, Hall County, Nebraska, a/k/a/ 122 E. 8th Street. The owner is requesting permission to assume a second mortgage, behind which the City would become the third mortgage.

Discussion

The City's current real estate lien is junior in priority to a Deed of Trust to Union Bank and Trust Company in the amount of \$35,400.00. A new lien in the amount of \$15,000 with GMAC Mortgage Corporation DBA ditech.com will become second in priority to Union Bank. The City will subordinate to the two aforementioned liens. By law, the new Deed of Trust would be junior in priority to the City's lien, however, the new lender, GMAC Mortgage Corporation DBA ditech.com, has asked the City to subordinate its real estate lien to the new Deed of Trust.

The new appraised value of the property is \$61,500 and is sufficient to secure the first mortgage of \$35,400.00, the second mortgage of \$15,000.00 and the remaining 40% of the City's loan (\$6,102.00). The City's loan of \$15,255.00 will be forgiven if the original owner of the property (David M. Job) resides in the house for a period of 10 years from the date of purchase which was November 13, 1998. Mr. Job has lived at this address for six years and has four years left before his loan with the City expires. The loan decreases 10% per year.

Community Development Subordination guidelines state the following:

1) Community Development will subordinate within the following conditions:

- a. Re-financing the original home loan to reduce the amount of interest paid or to reduce the amount of the original monthly payment. The loan cannot exceed the original loan by more than \$500.
- b. Re-financing the original home loan for debt consolidation ONLY IF THE AMOUNT OF THE LIEN IS PAID OFF TO THE CITY OF GRAND ISLAND. The amount depends if the program prorates the payment back or if it is a 100% payoff regardless of what year it is in.
- c. Only one subordination granted every 5 years per applicant.
- d. There may be extenuating circumstances for a request. Community Development staff will consider each client on a case by case basis.

The circumstances under which Mr. Job has requested subordination have been determined by the Community Development Division to be “extenuating” and the Community Development Advisory Committee recommended approval at their September 1, 2005 meeting.

Alternatives

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

1. Approve the Subordination Agreement
2. Disapprove or /Deny the Subordination Agreement
3. Modify the Subordination Agreement to meet the wishes of the Council
4. Table the issue

Recommendation

City Administration recommends that the Council approve the proposed Subordination Agreement, placing the City’s lien in third position to the new Deed of Trust.

Sample Motion

Approve the Subordination Agreement with GMAC Mortgage Corporation DBA ditech.com, placing the City in the junior position to the new Deed of Trust.

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 September, 2005, by 122 E. 8th St., owners of the land hereinafter described and hereinafter referred to as "Owners", and GMAC Mortgage Corporation DBA ditech.com, present owner and holder of the Deed of Trust and Note second and hereinafter described and hereinafter referred to as "Beneficiary".

WITNESSETH:

THAT, WHEREAS, David M. Job, a single person, DID EXECUTE a Deed of Trust dated November 13, 1998 to the City of Grand Island, covering:

Lot Eight (8), Block One Hundred Thirty Six (136), Union
Pacific Railway, 2nd Addition to the City of Grand Island,
Nebraska, Hall County, a/k/a 122 E. 8th Street

To secure a Note in the sum of \$15,255.00 dated November 13, 1998 in favor of the City of Grand Island, which Deed of Trust was recorded November 24, 1998 as Document No. 98-111514 in the Official Register of Deeds Office of Hall County (remaining amount owed as of September ___, 2005 is Six Thousand One Hundred Two Dollars (\$6,102.00); and

WHEREAS, Owner has executed, or are about to execute, a Deed of Trust and Note in the sum of \$15,000.00 dated September ___, 2005 in favor of GMAC Mortgage Corporation DBA ditech.com., hereinafter referred to as "Beneficiary" payable with interest and upon the terms and conditions described therein, which Deed of Trust is to be recorded concurrently herewith; and

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

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 second above mentioned; and

WHEREAS, Beneficiary 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 second above mentioned and provided that Beneficiary will specifically and unconditionally subordinate the lien or charge of the Deed of Trust second above mentioned to the lien or charge of the Deed of Trust in favor of Beneficiary; and

WHEREAS, it is to the mutual benefit of the parties hereto that Beneficiary make such loan to Owners; 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 second 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 Beneficiary 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 Beneficiary, and any renewals of extensions thereof shall unconditionally be and remaining 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 Beneficiary 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 second above to the lien or charge of the Deed of Trust in favor of Beneficiary 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 to, those provisions, if any, contained in the Deed of Trust second 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:

- 1) He consents to and approves (i) of all provisions of the Note and Deed of Trust in favor of Beneficiary above referred to, and (ii) all agreements, including but not limited to any loan or escrow agreements, between Owner and Beneficiary for the disbursement of the proceeds of Beneficiary's loan;
- 2) Beneficiary in making disbursements pursuant to any such agreement is under no obligation or duty to, nor has Beneficiary represented that it will, see to the application of such proceeds by the person or persons to whom Beneficiary 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;
- 3) He intentionally and unconditionally waives, relinquishes and subordinates the lien or charge of the Deed of Trust second above mentioned in favor of the lien or charge upon said land of the Deed of Trust in favor of Beneficiary 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
- 4) An endorsement has been placed upon the Note secured by the Deed of Trust second 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 Beneficiary 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.

By: _____

STATE OF NEBRASKA)) SS
COUNTY OF HALL)

Sworn and Subscribed to before me this _____ day of _____, 2005.

Notary Public

R E S O L U T I O N 2005-258

WHEREAS, the City of Grand Island, is the lender and secured party of a Deed of Trust dated November 13, 1998 and recorded on November 24, 1998 as Instrument No. 98-111514, in the amount of \$15,255.00, secured by property located at 122 E. 8th Street and owned by David M. Job, a single person, said property being described as follows:

Lot Eight (8), Block One Hundred Thirty Six (136), Union Pacific Railway's Second Addition to the City of Grand Island, Hall County, Nebraska.

WHEREAS, the Deed of Trust held by the City is junior in priority to a Deed of Trust to Union Bank and Trust Company in the amount of \$34,500 dated November 13, 1998, and recorded on November 24, 1998 as Instrument No. 98-111512 against such property; and

WHEREAS, David M. Job wishes to execute an additional Deed of Trust and Note in the amount of \$15,000 with GMAC Mortgage Corporation d/b/a ditech.com to be secured by the above-described real estate; and

WHEREAS, the new lender, The GMAC Mortgage Corporation d/b/a ditech.com, Beneficiary, wishes to extend the new loan secured by a Deed of Trust conditioned upon the City subordinating its Deed of Trust to their lien priority, making the City's Deed of Trust third in priority; and

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

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

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 Deed of Trust from David M. Job, a single person, to the City of Grand Island, as beneficiary to that of the new loan and Deed of Trust of GMAC Mortgage Corporation d/b/a ditech.com, 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, September 13, 2005.

RaNae Edwards, City Clerk

Approved as to Form <input type="checkbox"/> _____ September 7, 2005 <input type="checkbox"/> City Attorney
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