



City of Grand Island

Tuesday, August 14, 2007

Council Session

Item G8

#2007-194 - Approving Subordination Request for 107 East 7th Street (Dennis & Diane Gebers)

Staff Contact: Marsha Kaslon

SUBORDINATION AGREEMENT

COMES NOW the City of Grand Island, Nebraska, secured party and hereby partially subordinates its real estate lien recorded on March 12, 1986, on the following described real estate:

All of Lots Two (2) and Three (3), except the Southerly 33 feet of the Westerly 25 feet of Lot Three (3), Block Six (6), Original Town, now City of Grand Island, Hall County, Nebraska according to the recorded plat thereof.

It is the intent of this Agreement that the trust deed for amounts loaned by Charter West National Bank (New Lender) to Dennis A. Gebers and Diane L. Gebers (Borrowers) that has been or is about to be filed, shall be superior to the real estate lien of the City of Grand Island, its successors and assigns recorded March 12, 1986, up to the amount of \$44,800.00 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 real estate lien recorded March 12, 1986 at Document Number 86-101197 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 86-101197. It is understood that Charter West National Bank (New Lender) intends to lend funds to Borrowers but that the subordinated amount is not to exceed \$44,800.00 plus interest and amounts advanced to protect the collateral.

Nothing in this instrument is intended to relieve Borrowers of their obligation to make payments 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)	By _____
)ss.	Margaret Hornady, Mayor
COUNTY OF HALL)	

The foregoing instrument was acknowledged before me on _____, 20____, by Margaret Hornady, Mayor of the City of Grand Island, Nebraska.

Notary Public

RESOLUTION 2007-194

WHEREAS, the City of Grand Island, is the lender and secured party of a Deed of Trust dated March 10, 1986 and recorded on March 12, 1986, as Instrument No. 86-101197, in the amount of \$13,500.00, secured by property located at 107 East 7th Street and owned by Dennis A. Gebers and Diane L. Gebers, husband and wife, said property being described as follows:

All of Lots Two (2) and Three (3), except the Southerly 33 feet of the westerly 25 feet of Lot Three (3), Block Six (6), Original Town, now City of Grand Island, Nebraska, according to the record plat thereof.

WHEREAS, Dennis A. and Diane L. Gebers wish to execute a Deed of Trust and Note in the amount of \$44,800.00 with Charter West National 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.

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 Dennis A. Gebers and Diane L. Gebers, husband and wife, to the City of Grand Island, as beneficiary to that of the new loan and Deed of Trust of Charter West National 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, August 14, 2007.

Margaret Hornady, Mayor

Attest:

Paul Briseno, Deputy City Clerk

Approved as to Form	☐ _____
August 10, 2007	☐ City Attorney

Council Agenda Memo

From: Marsha Kaslon, Community Development

Council Meeting: August 14, 2007

Subject: Subordination Request for 107 East 7th Street
(Dennis A. Gebers and Diane L. Gebers)

Item #'s: G-8

Presenter(s): Marsha Kaslon, Community Development

Background

The City of Grand Island has a Real Estate Lien filed on property owned by Dennis A. Gebers and Diane L. Gebers, in the amount of \$13,500.00. On March 10, 1986, Community Development Block Grant funds in the amount of \$13,500.00 were loaned to Dennis A. Gebers and Diane L. Gebers, to assist in the rehabilitation of a home in the Community Development Block Grant program. The legal description is:

All of Lots Two (2) and Three (3), except the Southerly 33 feet of the westerly 25 feet of Lot Three (3), Block Six (6), Original Town Addition, an addition to the City of Grand Island, Nebraska according to the record plat thereof,

The owner is requesting permission to assume a first lien, behind which the City would become the second lien.

Discussion

The City's current Real Estate Lien is junior in priority to a Deed of Trust to Home Federal Savings and Loan Association of Grand Island, in the amount of \$13,500.00. A new lien in the amount of \$44,800.00 with Charter West National Bank would replace the senior Deed of Trust. By law, the new Deed of Trust would be junior in priority to the City's lien, however, the new lender, Charter West National Bank, has asked the City to subordinate its Real Estate Lien to the new Deed of Trust.

The new appraised value of the property is \$72,500.00 and is sufficient to secure the first mortgage of \$44,800.00 and the City's original lien of \$13,500.00. The City's loan of \$13,500.00 runs with the ownership of the property. The lien amount does not decrease and is only forgiven once the City of Grand Island has been paid back in full.

ALTERNATIVES

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

1. Approve the Subordination Request.
2. Refer the issue to a Committee.
3. Postpone the issue to a later date.

RECOMMENDATION

City Administration recommends that the Council approves the Subordination Request.

Sample Motion

Recommend approval to the Grand Island City Council of the Subordination Agreement with Charter West National Bank, 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 14th day of August, 2007, by Dennis A. Gebers and Diane L. Gebers, married persons, owners of the land hereinafter described and hereinafter referred to as "Owner", and Home Federal Savings and Loan Association of Grand Island, present owner and holder of the Deed of Trust and Note first and hereinafter described and hereinafter referred to as "Beneficiary".

WITNESSETH:

THAT, WHEREAS, Dennis A. Gebers and Diane L. Gebers, married persons, DID EXECUTE a Deed of Trust dated March 10, 1986 to the City of Grand Island, covering:

All of Lots Two (2) and Three (3), except the Southerly 33 feet of the westerly 25 feet of Lot Three (3), Block Six (6), Original Town Addition, an addition to the City Of Grand Island, Nebraska according to the record plat thereof,

To secure a Note in the sum of \$13,500.00 dated March 10, 1986 in favor of the City of Grand Island, which Deed of Trust was recorded March 12, 1986 as Document No. 86-101197 in the Official Register of Deeds Office of Hall County (remaining amount owed as of August 14, 2007 is \$13,500.00); and

WHEREAS, Owner has executed, or are about to execute, a Deed of Trust and Note in the sum of \$44,800.00 dated August 16, 2007 in favor of Charter West National Bank, 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 first 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 first above mentioned and provided that Beneficiary will specifically and unconditionally subordinate the lien or charge of the Deed of Trust first 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 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 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 first 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 first 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 first 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 first 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 _____, 2007.

Notary Public