



City of Grand Island

Tuesday, February 12, 2008

Council Session

Item G14

**#2008-41 - Approving Subordination Agreement for Tony and
Kristy Casarez, 610 East 12th Street**

Staff Contact: Joni Kuzma

Council Agenda Memo

From: Joni Kuzma, Community Development Division

Council Meeting: February 12, 2008

Subject: Subordination Request for 610 East 12th Street

Item #'s: G-14

Presenter(s): Joni Kuzma, Community Development
Administrator

Background

The City of Grand Island has a Deed of Trust filed on property owned by Tony and Kristy Casarez at 610 East 12th Street in the amount of \$24,000.00. On June 10, 1998, Community Development Block Grant funds were loaned to the owners to assist in the rehabilitation of a home in the Owner-occupied rehabilitation program. The address is 610 East 12th Street. The legal description is:

Lot Six (6), Block One (1), George Loan's Subdivision, Grand Island,
Hall County, Nebraska

The owner is requesting permission from the City to subordinate to a new mortgage amount and accept second position to the first mortgage.

Discussion

The City's current Deed of Trust is junior in priority to a Deed of Trust to Equitable Bank in the amount of \$52,006.15. The new lien amount would combine the senior Deed of Trust with a second lien through Equitable Bank for \$9,893.83 and a third lien through U S Dept of Education for \$9,658.71 for a total first mortgage of \$65,000.00. By law, the new Deed of Trust would be junior in priority to the City's lien. However, the new lender has asked the City to subordinate to the new Deed of Trust.

The appraised value of the property is \$101,000.00 and is sufficient to secure the first mortgage of \$65,000.00, and the City's mortgage of \$24,000.00. The loan from the City

reduces 10% annually for a period of 10 years. If the owners live at this property for 10 years from the origination date of the Deed of Trust, the lien will be forgiven in full.

The Community Development Advisory Committee reviewed subordination documents at their February 7, 2008 regular meeting and have recommended approval of the request.

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 approve the Subordination Request.

Sample Motion

Move to approve the Subordination Agreement for Tony and Kristy Casarez, 610 East 12th Street placing the City in second 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 12th day of February, 2008, by Tony J. Casarez and Kristy M. Casarez, husband and wife, owners of the land hereinafter described and hereinafter referred to as "Owner", and Equitable Bank, present owner and holder of the Deed of Trust and Note first and hereinafter described and hereinafter referred to as "Beneficiary".

WITNESSETH:

THAT, WHEREAS, Tony J. Casarez and Kristy M. Casarez, married persons, DID EXECUTE a Deed of Trust dated June 10, 1998, to the City of Grand Island, covering:

Lot Six (6), Block One (1), George Loan's Subdivision, in the City of Grand Island, Nebraska, Hall County, a/k/a 610 E. 12th Street

To secure a Note in the sum of \$24,000.00 and dated June 10, 1998 in favor of the City of Grand Island, which Deed of Trust was recorded June 12, 1998 as Document No. 98-105677 in the Official Register of Deeds Office of Hall County; and

WHEREAS, Owner has executed, or are about to execute, a Deed of Trust and Note not to exceed the sum of \$66,000.00 dated February 14, 2008 in favor of Equitable 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 or 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 _____, 2008.

Notary Public

RESOLUTION 2008-41

WHEREAS, the City of Grand Island, is the lender and secured party of a Deed of Trust dated June 10, 1998 and recorded on June 12 1998, as Instrument No. 98-105677, in the amount of \$24,000.00, secured by property located at 610 East 12th Street and owned by Tony and Kristy Casarez, husband and wife, said property being described as follows:

Lot Six (6), Block One (1), George Loan's Subdivision, in the City of Grand Island, Hall County, Nebraska.

WHEREAS, Tony and Kristy Casarez wish to execute a Deed of Trust and Note in the amount of \$65,000.00.00 with Equitable 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 Tony and Kristy Casarez, husband and wife, to the City of Grand Island, as beneficiary to that of the new loan and Deed of Trust of Equitable 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, February 12, 2008.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

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| Approved as to Form | <input type="checkbox"/> | _____ |
| February 7, 2008 | <input type="checkbox"/> | City Attorney |