

City of Scottsbluff, Nebraska

Monday, March 6, 2017

Regular Meeting

Item Reports4

Council to consider approval of a Subordination Agreement between the City and Platte Valley Bank for the Skiles Properties, LLC pursuant to the Economic Development Assistance Agreement and authorize the Mayor to execute the agreement.

Staff Contact: Nathan Johnson, City Manager

Cindy Dickinson

From: Rick Ediger <REdiger@simmonsolsen.com>
Sent: Thursday, March 02, 2017 9:37 PM
To: Nathan Johnson
Cc: Hod Kosman; Cindy Dickinson
Subject: Skiles Subordination
Attachments: Skiles PVB DOT Subordination.docx

Nathan: Attached is my draft of the Subordination Agreement for Skiles Properties. As was indicated during the Application Review Committee meeting, a recent appraisal indicates that there is \$393,750 equity after Platte Valley's Loan and the current potential repayment to the City is \$46,300. The Committee determined that there was sufficient equity to protect the City's interest. In addition, the EDA Agreement contemplated that the City's lien would be in second position. That fact had not previously been documented. Thanks, Rick.

Rick L. Ediger

Simmons Olsen Law Firm, P.C.

1502 2nd Avenue

Scottsbluff, NE 69361

(308) 632-3811; (308) 635-0907 (Fax)

Website



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MEMORANDUM

TO: Scottsbluff LB 840 Committee
FROM: Jerry Skiles
DATE: February 27, 2017
RE: Skiles Properties, LLC/Skiles Industries


History: In 2009, I moved one of my manufacturing divisions from Kansas to Scottsbluff. We operated in rented space but soon outgrew that facility. In 2013, I purchased land at Scotts Bluff County Airport and moved our manufacturing operation.

Appraisal & Ownership: The original building and improvements were appraised by Gary Brandt for \$1,575,000. Since that time, I added another building and significant improvements as noted by the Robert Smith Update, which indicated "significantly improved." Skiles Properties, LLC is the owner of the land, buildings, and improvements. Skiles Industries rents from Skiles Properties, LLC and is the sole tenant. I own both entities 100%.

Current Business: Skiles Industries d/b/a Scottsbluff Industries is doing significant production for the Scottsbluff High School projects in addition to our normal agricultural manufacturing business. I approached the Bank to rework our loan to replenish the working capital that we used in the "significant improvements" to the facility.

Equity/LB840: The Bank approved a 75% loan based on the original appraisal of \$1,575,000, which is \$1,180,000. The loan is amortized over ten (10) years. Based on the original appraisal, there would be \$395,000 in equity to cover the LB840 debt.

Request: When the Bank did a title search for the refinance, they found that LB840 filing predated their filing. I am requesting that LB840 subordinate their debt to the Bank debt. The Bank debt will not exceed 75% loan-to-value based on the 2013 appraisal.



Jerry Skiles, President

Return to:
Rick L. Ediger
Simmons Olsen Law Firm, P.C.
1502 2nd Ave
Scottsbluff, NE 69361

SUBORDINATION AGREEMENT

This Subordination Agreement (AAgreement@) is dated March ___, 2017 is made between the City of Scottsbluff, Nebraska, a Municipal Corporation (the “City”), Rick L. Ediger (the “Trustee”) and Platte Valley Bank, Scottsbluff, Nebraska (the “Bank”).

Recitals:

a. The City is the Beneficiary under a Deed of Trust dated October 1, 2013 and recorded in the records of the Scotts Bluff County Register of Deeds on October 11, 2013, as Instrument No. 2013-5593 (the “City Deed of Trust”). The City Deed of Trust was given by Skiles Properties, LLC (ASkiles@), as Trustor, to the Trustee, and covers the following described real estate (the AReal Estate@):

Lots 4, 5, 6 and 7, Block 2, Skyport Industrial Park, Scotts Bluff County, Nebraska

The Real Estate has since been replatted as follows:

Lot 4A, Block 2, Skyport Industrial Park, a Replat of Lots 4-7, Block 2, Skyport Industrial Park, Scotts Bluff County, Nebraska

b. The Bank is the Trustee and Beneficiary under a Deed of Trust dated November 14, 2013 given by Skiles and recorded in the records of the Scotts Bluff County Register of Deeds on January 10, 2014, as Instrument No. 2014-143 (the “Bank Deed of Trust”). The Bank Deed of Trust covers the Real Estate.

c. The City Deed of Trust was given pursuant to an Economic Development Assistance Agreement dated October 1, 2013 (the “EDA Agreement”). The EDA Agreement contemplated that the City Deed of Trust would be subordinate to the Bank Deed of Trust.

d. The subordination of the City Deed of Trust to the Bank Deed of Trust has not previously been documented, and the Bank has now requested the subordination.

Agreement:

1. The City subordinates the lien of the City Deed of Trust to the lien of the Bank Deed of Trust and agrees that the City Deed of Trust is junior and inferior to the security interest, lien and claim of the Bank.

2. The City and the Trustee agree that the Bank shall have a senior and prior security interest, lien and claim upon the Real Estate to secure all obligations secured by the Bank Deed of Trust, superior to any right, title, interest, lien or claim which the City may now or later have in the Real Estate; provided, however, the principal amount of the debt secured by the Bank Deed of Trust, at any one time, shall not exceed \$1,181,250 (the "Maximum Principal"). The subordinations and priorities provided for in this Agreement are applicable irrespective of the time, manner or order of attachment or perfection of any security interest, lien or claim or the time or order of filing.

3. This Agreement shall constitute a continuing agreement of subordination, and the Bank may, without notice to the City or the Trustee, lend monies, extend credit, and make any other financial accommodations as secured by the Bank Deed of Trust, but only to the extent that the principal debt secured by the Bank Deed of Trust does not exceed the Maximum Principal.

4. In order to carry out the terms and intent of this Agreement more effectively, the parties will do all reasonable acts necessary or convenient to preserve the benefits of this Agreement and will execute any other agreements and documents which another party may reasonably request for that purpose.

5. This Agreement shall inure to the benefit of the Bank's successors and assigns and bind the successors and assigns of City and Trustee.

6. This Agreement shall be governed by the laws of the State of Nebraska.

City of Scottsbluff, Nebraska, a Municipal Corporation,

Platte Valley Bank, Scottsbluff, Nebraska

By _____
Randy Meininger, Mayor

By: _____
H.H. Kosman, President

Rick L. Ediger, Trustee

State of Nebraska, Scotts Bluff County:

This Agreement was acknowledged before me on March ____, 2017 by Randy Meininger,
Mayor of the City of Scottsbluff, Nebraska.

Notary Public

State of Nebraska, Scotts Bluff County:

This Agreement was acknowledged before me on March ____, 2017 by H.H. Kosman,
President of Platte Valley Bank, Scottsbluff, Nebraska.

Notary Public

State of Nebraska, Scotts Bluff County:

This Agreement was acknowledged before me on March ____, 2017 by Rick L. Ediger,
Trustee.

Notary Public