

Meeting Date: February 24, 2015

Agenda Item 14

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration Workshop

SHORT TITLE OR MOTION: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SUBORDINATION AGREEMENT AMONG BANKUNITED, N.A., AD GRAPHICS, INCORPORATED, AND THE CITY OF POMPANO BEACH; PROVIDING AN EFFECTIVE DATE. (CDBG Funds-\$50,000)

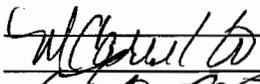
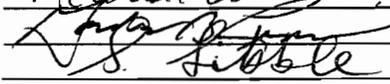
Summary of Purpose and Why:

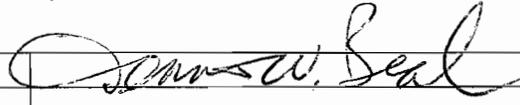
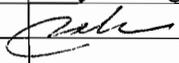
Ad Graphics, Incorporated ("Ad Graphics") received a \$50,000 CDBG Revolving Loan Fund ("RLF") loan on December 13, 2012. Payments since then have been timely; the loan's remaining balance is approximately \$30,933.

When RLF loans are made, borrowers pledge collateral. At the time of the loan, the City's lien on the company's assets was secondary to Wells Fargo's. Ad Graphics is refinancing the Wells Fargo loan through Bank United, so that the City will move from second to first position on all company assets except for the two pieces of equipment listed in the attached UCC Subordination Agreement, securing a loan of approximately \$200,000. Bank United's interest in all other assets will be second in line behind the City's. The net value of the remaining assets is estimated to be \$486,266. The City is further secured by a personal guaranty from each of the company's owners.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: Office of Housing and Urban Improvement
- (2) Primary staff contact: Mark Korman, Program Compliance Manager Ext. 4656
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: CDBG Revolving Loan funds in the amount of \$50,000

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
OHUI	<u>2/11/15</u>	<u>Approval</u>	
City Attorney	<u>2/12/15</u>	<u>approval</u>	
Finance	<u>2/11/15</u>	<u>approval</u>	<u>S. Sibble</u>

<input checked="" type="checkbox"/> City Manager	
	

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1st Reading	1st Reading	Results:	Results:
2nd Reading			

RESOLUTION NO. 2015-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SUBORDINATION AGREEMENT AMONG BANKUNITED, N.A., AD GRAPHICS, INCORPORATED, AND THE CITY OF POMPANO BEACH; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Agreement among BankUnited, N.A., Ad Graphics, Incorporated, and the City of Pompano Beach, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement among BankUnited, N.A., Ad Graphics, Incorporated, and the City of Pompano Beach.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2015.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK



City Attorney's Communication #2015-543

February 5, 2015

TO: Mark Korman, Program Compliance Manager
FROM: Gordon B. Linn, City Attorney
RE: Resolution – Subordination Agreement / Ad Graphics, Incorporated

I have prepared and attached the following form of resolution:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SUBORDINATION AGREEMENT AMONG BANKUNITED, N.A., AD GRAPHICS, INCORPORATED, AND THE CITY OF POMPANO BEACH; PROVIDING AN EFFECTIVE DATE.

I am also attaching the original Subordination Agreement under cover of this memorandum. Prior to submitting the resolution to the City Commission, please confirm that "Borrower's" proper corporate name is **Ad Graphics, Incorporated**. If so, please have the agreement revised to reflect the correct name on the first page and signature page of the agreement.



GORDON B. LINN

GBL/jrm
L:cor/comdev/2015-543

Attachments

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") is made as of the ___ day of ___, 2015, by and between Ad Graphics, Incorporated (hereafter referred to as "BORROWER"), BankUnited, N.A., (hereafter referred to as "LENDER") and City of Pompano Beach (hereafter referred to as "CREDITOR").

WITNESSETH:

WHEREAS, LENDER has made or is about to make a loan to BORROWER ("LENDER Loan"), which LENDER Loan is to be secured by a blanket lien on BORROWER'S Business Assets (as hereinafter defined);

WHEREAS, BORROWER'S Business Assets are owned by BORROWER; and

WHEREAS, BORROWER previously obtained a loan from CREDITOR, which loan is secured by an all asset UCC filing ("CREDITOR Loan");

WHEREAS, as a condition to making the LENDER Loan, LENDER requires that CREDITOR execute and deliver this Agreement whereby CREDITOR agrees to subordinate its interests in and to the BORROWER'S Business Assets to the LENDER LOAN.

NOW, THEREFORE, in consideration of the mutual premises contained herein and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. CREDITOR does hereby agree to subordinate its CREDITOR Loan and security interest, including, without limitation, that certain State of Florida UCC Financing Statement and attachments filed on **January 7, 2013** bearing file number **201308195336** and any other financial statements or other security interests given to CREDITOR in BORROWER'S Business Assets in connection with the CREDITOR Loan, to the lien of the LENDER LOAN, and any amendments, modifications, consolidations, renewals or extensions of the LENDER Loan. **For purposes of this Agreement, the term BORROWER'S Business Assets shall be deemed to specifically include only 1) VersaCoater 63- Serial #13120143 and 2) EFI Vutek QS 3200 Printer- Serial #630279.**
2. CREDITOR represents and warrants to LENDER that (a) no representations or agreements of any kind have been made to CREDITOR which would limit or qualify in any way the terms of this Agreement, (b) CREDITOR is the legal and beneficial owner of the CREDITOR Loan, and (c) CREDITOR is not prohibited, or in any way restricted, from entering into this Agreement.
3. CREDITOR hereby acknowledges and agrees that this Agreement shall constitute a continuing agreement of subordination and shall continue in full force and effect until LENDER has been paid in full.
4. No amendment or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by LENDER, and then such waiver or consent shall be effective only in the specific instances and for the specific purpose for which given.

5. This Agreement is made and construed in accordance with, and governed by the laws of the State of Florida, without regard to its conflict of laws principles. The parties hereby agree to waive trial by jury.
6. This Agreement may be executed in counterparts, and when executed by all parties hereto shall constitute one agreement.

This Agreement has been delivered to LENDER and accepted by LENDER in _____ County, State of Florida.

IN WITNESS THEREOF, the parties have hereunto executed this Agreement for the purposes expressed herein.

Signed, sealed and delivered
in the presence of:

CREDITOR:
City of Pompano Beach

Print name: _____

BY: _____
TITLE: _____
Print name and title

Print name: _____

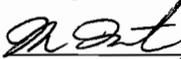
STATE OF)
)
COUNTY OF)

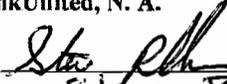
The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____ who is personally known to me or who has produced a _____ drivers' license as identification.

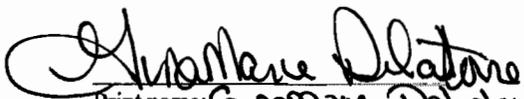
Print name: _____
Notary Public _____
Commission Expires: _____
Commission Number: _____

Signed, sealed and delivered
in the presence of:

LENDER:
BankUnited, N. A.


Print name: Michael Warmstein


BY: Steven Rashkin
TITLE: VP
Print name and title


Print name: Guadalupe Delatorre

(SIGNATURES CONTINUED FROM PREVIOUS PAGE)

STATE OF Florida)
)
COUNTY OF Broward)

The foregoing instrument was acknowledged before me this 11th day of Feb, 2015, by Saeve Rashkin who is personally known to me or who has produced a personally known drivers' license as identification.



ERIK VELIAN
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF161161
Expires 9/18/2018

Print name: Erik Velian
Notary Public
Commission Expires: 9/18/18
Commission Number: FF 161161

Signed, sealed and delivered
in the presence of:

BORROWER:
Ad Graphics, Incorporated

Print name: _____

BY: _____
TITLE: _____
Print name and title

Print name: _____

STATE OF)
)
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____ who is personally known to me or who has produced a _____ drivers' license as identification.

Print name: _____
Notary Public
Commission Expires: _____
Commission Number: _____

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 by **LAMAR FISHER**, as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND**, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number