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**CITY COUNCIL AGENDA
WEDNESDAY, MAY 27, 2020
250 NORTH 5TH STREET
6:30 PM – SPECIAL MEETING – CITY HALL AUDITORIUM**

To become the most livable community west of the Rockies by 2025

Call to Order, Pledge of Allegiance, Moment of Silence

REGULAR AGENDA

1. Other Action Items

a. Execute Subordination Agreement for the Bonsai Project in Las Colonias Business Park and Authorize the City Manager to Sign the Deposit Account Assignment and Control Agreement for the Bonsai Project

2. Adjournment



Grand Junction City Council

Regular Session

Item #1.a.

Meeting Date: May 27, 2020

Presented By: John Shaver, City Attorney

Department: City Attorney

Submitted By: John Shaver, City Attorney

Information

SUBJECT:

Execute Subordination Agreement for the Bonsai Project in Las Colonias Business Park and Authorize the City Manager to Sign the Deposit Account Assignment and Control Agreement for the Bonsai Project

RECOMMENDATION:

Council discussion and as determined by a majority, authorization for the City Manager to sign a subordination agreement relative to Bonsai for securing construction financing for its development project in Las Colonias Business Park and authorization for the City Manager to sign the Deposit Account Assignment and Control Agreement (Escrow Instructions) to collateralize the Bonsai project in accordance with the City Council approved Cooperative Agreement.

EXECUTIVE SUMMARY:

Bonsai (Bonsai Development LLC) is in the process of securing financing for its project in the Las Colonias Business Park. The lender requires subordination of the land leases to the construction loan.

To collateralize the Bonsai project the City Council approved a Cooperative Agreement relating to the construction of the Bonsai project. Escrow instructions (Deposit Account Assignment And Control Agreement) concerning funding the Cooperative Agreement are necessary to close the Bonsai loan.

BACKGROUND OR DETAILED INFORMATION:

On March 22, 2018 the City Council approved a lease (Master Lease) of property in the

Las Colonias Park Business Park to the Las Colonias Development Corporation (LCDC) for the purposes of development of the Business Park.

Subsequent and pursuant to the Master Lease, the LCDC sub-leased pad sites to Bonsai and Rocky Mounts. Bonsai (Bonsai Development LLC) is in the process of securing project financing for its project on its respective leased property.

As a condition of construction financing, the lender requires subordination of leases to the construction loan. Consent of the LCDC to subordinate its interests in the lease will similarly be required as is the City's consent.

The City Attorney has reviewed the subordination agreement and recommends that the City Council review the agreement and if it is acceptable to the Council, authorize the City Manager to sign the agreement to facilitate the closing of the loan for the project.

The City Attorney and City Manager have reviewed the Deposit Account Assignment and Control Agreement (Escrow Instructions) to collateralize the Bonsai project. The City staff recommends that the City Council review the agreement and if it is acceptable to the Council authorize the City Manager to sign the Escrow Instructions and fund the Cooperative Agreement.

FISCAL IMPACT:

The City Council first authorized and adopted the \$1 million incentive in the 2018 Budget. It has since then been carried forward and re-appropriated the in 2019 and 2020 Budgets, and most recently in the Supplemental Appropriation adopted by Council on May 6, 2020.

There is expected to be significant economic benefit from the continued investment in the growth and development of Las Colonias Business Park.

SUGGESTED MOTION:

I move to (authorize/not authorize) the City Manager to a) sign a subordination agreement relative to Bonsai for securing construction financing for its development project in Las Colonias Business Park and b) sign the Deposit Account Assignment and Control Agreement (Escrow Instructions) to collateralize the Bonsai project as contemplated by the Cooperative Agreement dated March 29, 2018.

Attachments

1. Deposit Acct Agreement
2. Subordination Agreement - Master Lease

DEPOSIT ACCOUNT ASSIGNMENT AND CONTROL AGREEMENT (“Agreement”)

This Agreement is dated as of the ___ day of March 2020, by and among **ALPINE BANK, a Colorado banking corporation** (“Bank”), **THE CITY OF GRAND JUNCTION**, a Colorado home rule municipality (herein referred to as “City” or “Assignee”) with offices at 250 N. 5th Street, Grand Junction, CO 81501 and **BONSAI DESIGN, LLC**, a Colorado limited liability company (herein referred to as “BONSAI”), **BONSAI HOLDINGS, LLC**, a Colorado limited liability company (herein referred to as “BONSAI HOLDINGS”), **BONSAI DEVELOPMENT, LLC**, a Colorado limited liability company (herein referred to as “BONSAI DEVELOPMENT”), and **BONSAI AERIAL ADVENTURES - GRAND JUNCTION, LLC**, a Colorado limited liability company (herein referred to as “BONSAI AERIAL ADVENTURES”), all with offices at 201 South Avenue, Grand Junction, CO 81501. BONSAI, BONSAI HOLDINGS, BONSAI DEVELOPMENT and BONSAI AERIAL ADVENTURES shall be collectively referred to as “Company.”

This Agreement refers and applies to checking account # _____ currently maintained by City at Bank (the “Account”).

Company is commencing construction of a two-story office building of no less than 21,366 square feet on Lease pad A in Las Colonias Business Park, Grand Junction Colorado, to be used by Bonsai as its corporate headquarters and future tenant space, which is known and referred to as the “Facility” in the COOPERATIVE AGREEMENT dated the 29th day of March 2018 between Company and Assignee, a copy of which is attached hereto and incorporated by reference as Exhibit A.

To collateralize a construction loan and subsequently defray the cost of constructing the Facility, the City has agreed to provide a cash grant in the amount of \$1,000,000.00 (“Cash Grant”) to fund an escrow account (“Escrow Account”), which in conjunction with private construction financing (“Construction Loan” provided by the Bank) shall be applied to pay for construction of the Facility with any amount of the Cash Grant remaining after payment of construction-related expenses payable and upon completion and issuance of a certificate of occupancy by the Mesa County Building Department (“Certificate of Occupancy”) for the Facility to BONSAI DEVELOPMENT. BONSAI DEVELOPMENT shall first apply the Construction Loan to pay down construction financing with the Bank.

Specific Escrow instructions pursuant to Paragraph 2, Page 3 of the COOPERATIVE AGREEMENT, as the same is amended hereby, are as follows:

- (1) the Construction Loan and the Cash Grant shall be disbursed only for expenses related to the construction of the Facility. Bonsai, the Bank and the City understand and agree that the Cash Grant shall be “last dollar” funding for construction of the Facility;
- (2) disbursements from the Escrow Account shall be made only after BONSAI’S construction loan proceeds are fully disbursed for the construction of the Facility;
- (3) applications for disbursement shall be in writing and be subject to approval by BONSAI, the CITY and the BANK and shall include inspection reports and any and all and documentation regularly required by the BANK for loan disbursements, including but not limited to mechanics’ and material supplier lien waivers;

(4) in the event of a default by BONSAI on the terms of the Construction Loan and/or this Agreement, the CITY may request in writing that the Bank withhold any disbursement(s) of the Escrow Account or if disbursement(s) has(have) begun, to withhold further disbursement(s) of the Escrow Account until the default is cured to the satisfaction of the CITY. The CITY may request that disbursement(s) be withheld if it reasonably believes that the Facility cannot or will not receive a Certificate of Occupancy and/or the funds available under the Construction Loan and Escrow Account are insufficient to complete the Facility to the point of permitted occupancy;

(5) any amounts remaining in the Escrow Account after issuance of the Certificate of Occupancy for the Facility shall be disbursed to BONSAI ENTITIES to pay down the balance of the Construction Loan, all subject to full and complete compliance with all applicable law, rules and regulations of the City or entity having lawful jurisdiction.

Assignee shall grant Bank an assignment of the Account in the amount of the Cash Grant, and the Company hereby agrees and confirms that it has no dominion or control over the Account, either arising out of or under the Cooperative Agreement and/or this Agreement, and further disclaims any right or ability of any nature to control or otherwise direct or make any claim against the Account except as otherwise provided in this Agreement.

The Company and Bank agree that the City shall have no right to close the Account or issue instructions or claim any other right to access or withdraw or transfer funds from or with respect to the Account except as provided in this Agreement. Bank has not and will not agree with the Company or any third party to comply with instructions or other directions concerning the Account except as provided in this Agreement.

Within seven (7) days after the City approves and presents a Certificate of Occupancy for the Facility, Assignee shall release the Escrow funds by written notification to Bank.

It is understood that the services contemplated by this Agreement are provided as a convenience to Company. In consideration thereof, Company agrees to indemnify and hold Bank and Assignee harmless from any and all liability, claims, losses, and demands whatsoever, including reasonable legal fees and expenses, however arising or incurred, because of or in connection with Bank's performance of this Agreement and the transfer of funds contemplated under this Agreement except those arising from Bank's or Assignee's gross negligence, bad faith or willful misconduct.

This Agreement shall continue in full force and effect until terminated by agreement of all the parties or until terminated by performance as provided in this Agreement. Termination of this Agreement shall in no event affect any obligation incurred under this Agreement before such termination. This Agreement may be amended or modified from time to time only in a writing executed by each of the parties hereto. This Agreement shall automatically terminate at such time as the Certificate of Occupancy for the Facility is issued and the Escrow funds are released and paid to the Bank. Performance or termination of this Agreement does not satisfy or terminate the Cooperative Agreement.

Any notice or request hereunder shall be given to any party at its respective address, facsimile number or e-mail address set forth beneath such party's signature to this Agreement or at such other address, facsimile number or e-mail address as such party may hereafter specify in a notice given in the manner required under this Section. Any notice or request hereunder shall be given only by, and shall be deemed to have been received upon (each, a "Receipt"): (i) registered or certified mail, return receipt requested, on the date received as indicated in such return receipt, (ii) delivery by a nationally recognized overnight courier, one business day after deposit with such courier, or (iii) facsimile or electronic transmission (e-mail) to any

party upon successful transmission.

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without giving effect to its choice of law provisions. This Agreement may be signed by facsimile and in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement sets forth the entire agreement of the parties with respect to the subject matter hereof and thereof and shall supersede any other agreement relating to the Account and/or the Escrow Account to the extent of any conflict. This Agreement is binding upon the parties hereto and their respective successors and assigns and/or heirs and personal representatives and shall inure to their benefit upon written notice to the parties hereto. No waiver of any rights hereunder shall be binding on any party hereto unless such waiver is in writing and signed by the party against whom enforcement is sought. If any provision of this Agreement is adjudicated to be invalid under applicable laws or regulations, such provision shall be inapplicable to the extent of such invalidity without affecting the validity or enforceability of the remainder of this Agreement which shall be given effect so far as possible.

Company acknowledges that the agreements made by it and the authorizations granted by it herein are irrevocable and are powers coupled with an interest.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, this Agreement has been signed by the parties with full authority to act for and bind the entity for which signed as of the date written above.

BANK:

ALPINE BANK

By: _____
Name: _____
Title: _____
Address: _____

Phone: () _____
Fax: () _____
E-Mail: _____

COMPANY:

BONSAI DEVELOPMENT, LLC

By: _____
Name: _____
Title: _____
Address: _____

Phone: () _____
Fax: () _____
E-Mail: _____

BONSAI DESIGN, LLC

By: _____
Name: _____
Title: _____
Address: _____

Phone: () _____
Fax: () _____
E-Mail: _____

BONSAI HOLDINGS, LLC

By: _____
Name: _____
Title: _____
Address: _____

Phone: () _____
Fax: () _____

E-Mail: _____

**BONSAI AERIAL ADVENTURES – GRAND
JUNCTION, LLC**

By: _____

Name: _____

Title: _____

Address: _____

Phone: () _____

Fax: () _____

E-Mail: _____

ASSIGNEE:

CITY OF GRAND JUNCTION

By: _____

Name: Greg Caton

Title: City Manager

Address: 250 N. 5th Street , Grand Junction, CO

Phone: (970)244-1508

E-Mail: gregc@gjcity.org

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:
Alpine Bank

**SUBORDINATION AGREEMENT
(MASTER LEASE)**

Notice: The subordination provided for in this agreement results in your interest becoming subject to and of lower priority than the interest created by some other or later instrument.

THIS AGREEMENT (this “**Agreement**”) is made and entered into as of this ___ day of _____, 2020, by and between **ALPINE BANK**, a Colorado banking corporation (“**Lender**”), the City of Grand Junction, a Colorado home rule municipal corporation (“**Master Landlord**”), Las Colonias Development Corporation, a Colorado nonprofit corporation (“**Tenant**” or “**Sub Landlord**” or “**LCDC**”) and Bonsai Development, LLC, a Colorado limited liability company (“**Sub Tenant**” or “**Bonsai**”), collectively (the “**Parties**”).

RECITALS

A. Master Landlord and Tenant have executed a Master Lease and Development Agreement for Las Colonias Business and Recreation Park dated March 22, 2018, (the “**Master Lease**”) for the premises legally described in **Exhibit A** attached hereto and made a part hereof (the “**Master Lease Premises**”). The Master Lease is in full force and effect and has not been amended. The Master Landlord and Tenant represent that both parties to the Master Lease have fully satisfied their respective obligations under the Master Lease thus far.

B. Sub Landlord and Sub Tenant have executed a Lease Agreement for Pad Sites A & I at Riverfront at Las Colonias dated July 31, 2018 (the “**Sub Lease**”). The Sub Lease is in full force and effect and has not been amended. The Sub Landlord and Sub Tenant represent that both parties to the Sub Lease have fully satisfied their respective obligations under the Sub Lease thus far.

C. Lender has provided construction loan financing in the amount of \$ _____ to Bonsai (the “**Construction Loan**”) and holds a Deed of Trust (the “**Deed of Trust**”), which encumbers a portion of the Master Lease Premises legally described in **Exhibit B** attached hereto and made part hereof (the “**Sub Lease Premises**”). The Deed of Trust is dated _____ and has been recorded in the Mesa County, Colorado public records on _____ at reception number _____.

D. Lender, Sub Landlord and Sub Tenant will execute a separate Subordination, Non-Disturbance and Attornment Agreement and separate Landlord’s Release and Consent in a form provided by Lender.

E. Lender, Master Landlord, Tenant and Sub Tenant desire to establish certain rights, safeguards, obligations, and priorities with regard to their respective interests by means of this Subordination Agreement.

TERMS OF THE AGREEMENT

IN CONSIDERATION of the mutual covenants and promises of the Parties and other good and valuable consideration, the Parties agree as follows:

1. **Master Lease Subordinate to Lender's Deed of Trust.** The Master Lease shall be subject and subordinate to the lien of the Lender's Deed of Trust and to all of its terms, conditions and provisions, to all advances made or to be made, and to any renewals, extensions, modifications or replacements thereof.

2. **Right to Cure Master Lease Defaults.** In the event Master Landlord ever claims a default by the Tenant under the Master Lease, Master Landlord agrees to give Lender and Sub Tenant prompt written notice and an opportunity to cure the default. At Lender or Sub Tenant's option, Lender or Sub Tenant shall have a reasonable time to cure any such default, which shall not be greater than sixty (60) days from the date the Lender and Sub Tenant receive a copy of such notice of default from the Master Landlord.

3. **Master Landlord's Sale or Conveyance of Master Lease Premises or Sub Lease Premises.** Any sale or conveyance by the Master Landlord of the Master Lease Premises and/or Sub Lease Premises shall be subject to the Master Lease, Sub Lease, this Agreement and the Lender's Deed of Trust.

4. **Sub Tenant Improvements.** Master Landlord and Tenant acknowledge and agree that any improvements made or constructed by Sub Tenant shall remain the property of the Sub Tenant, and subject to the Lender's Deed of Trust, upon and following the termination of the Master Lease and/or Sub Lease.

5. This Agreement may not be modified other than by an agreement in writing signed by the Parties or by their respective successors in interest.

6. This Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns.

7. Any person who signs this Agreement represents and warrants that he or she has authority to execute this Agreement.

8. This Agreement shall be governed by the laws of the State of Colorado. In the event of any dispute or lawsuit, the Parties agree to submit to the jurisdiction of the courts of Mesa County, Colorado. All Parties hereby waive the right to any jury trial in any action, proceeding or counterclaim brought by any party against any other party.

9. Notices shall be in writing and shall be effective when actually delivered by hand or by a nationally recognized overnight courier.

TO INDICATE THEIR AGREEMENT TO THE ABOVE, the Parties or their authorized representatives or officers have signed this document.

LENDER:
Alpine Bank

By: _____

Name: *

Title: *

MASTER LANDLORD:

City of Grand Junction

By: _____

Name: *

Title: *

TENANT:

Las Colonias Development Corporation

By: _____

Name: *

Title: *

SUB TENANT:

Bonsai Development, LLC

By: _____

Name: *

Title: *