

FEB 24 2011



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MEMORANDUM**DOWNTOWN REAL ESTATE MEMO NO. DRE11-009**

DATE: FEBRUARY 24, 2011

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, ACTING CITY MANAGER *RD*
 PAT MCDERMOTT, ASSISTANT CITY MANAGER
 JENNIFER MORRISON, NEIGHBORHOOD RESOURCES DIRECTOR *JM*
 SHARON A. JOYCE, REAL ESTATE COORDINATOR *SJ*

SUBJECT: REQUEST CITY COUNCIL APPROVE PURCHASE AND LOAN AGREEMENT BETWEEN HABITAT FOR HUMANITY AND THE CITY OF CHANDLER, AUTHORIZING LOAN OF \$57,500 TO HABITAT FOR HUMANITY; AND AUTHORIZING CITY RELEASE OF LIEN FOR AND ACCEPTANCE OF PROPERTY LOCATED AT 83 E. KESLER STREET.

RECOMMENDATION: Staff recommends City Council approve Purchase Loan Agreement between Habitat for Humanity and the City of Chandler which will allow a loan of \$57,500 to Habitat for Humanity and will authorize release of lien for and acceptance of property located at 83 E. Kesler Street from Habitat to the City of Chandler. Authorizing the City Manager or their designee to execute documents necessary to complete the transactions.

BACKGROUND/DISCUSSION: On April 24, 2008 City Council approved a loan agreement with Habitat for Humanity ("Habitat") that authorized lending up to \$235,000 to Habitat for acquisition of properties in the City's designated Housing Development Area. Habitat's plan was to construct or remodel five (5) houses with the funds. Each loan made under the loan agreement was structured to be forgiven if Habitat constructed and transferred the property to its target population within 3 years of the loan commencement date.

Habitat did acquire, construct and convey to its target population 4 of the houses. Habitat also acquired the fifth, located at 83 E. Kesler Street. However, it has not been able to improve the fifth parcel or to market and sell it for residential use, and will not be able to do so before the three-year loan period expires. Instead, Habitat has located and placed in escrow to purchase another property located at 354 S. Dakota Street within the Housing Development Area. Staff and Habitat are proposing that the Dakota property be acquired and the Kesler be transferred to the City.

In order to allow this to happen, a new agreement, the Purchase and Loan Agreement is proposed. This agreement will outline similar conditions as the original agreement executed in April 2008, plus it will require the following:

- The agreement will specify that \$57,500 be loaned to Habitat for the property at 354 S. Dakota Street;
- The City will release the lien on the property at 83 E. Kesler Street;
- Habitat will deed the property at 83 E. Kesler Street to the City of Chandler.

FINANCIAL IMPLICATIONS: Downtown Redevelopment will transfer \$57,500 to Neighborhood Resources, which will loan the funds to Habitat for Humanity. Downtown Redevelopment will oversee and fund maintenance and demolition of 83 E. Kesler until its assemblage and redevelopment at a later date.

PROPOSED MOTION: Move that City Council approve Purchase Loan Agreement between Habitat for Humanity and the City of Chandler, which will authorize a loan of \$57,500 to Habitat for Humanity, and will authorize release of lien for and acceptance of property located at 83 E. Kesler Street from Habitat to the City of Chandler. Authorize the City Manager or their designee to execute documents necessary to complete the transactions.

ATTACHMENTS: Map

PURCHASE AND LOAN AGREEMENT

THIS PURCHASE AND LOAN AGREEMENT (this "**Agreement**") is made as of this February 16, 2011, by and between the CITY OF CHANDLER, an Arizona municipal corporation ("**City**"), and HABITAT FOR HUMANITY, CENTRAL ARIZONA, an Arizona nonprofit corporation, formerly known as Habitat for Humanity, Valley of the Sun, an Arizona nonprofit corporation ("**Developer**"). City and Developer are sometimes referred to in this Agreement collectively as the "**Parties**," or individually as a "**Party**."

1. **Recitals.** As background to this Agreement, the Parties recite, state and acknowledge the following, each of which is fully incorporated into this Agreement:

A. Developer is an experienced developer of affordable, residential properties for purchase or lease by low-income families.

B. Pursuant to Title 9, Chapter 4, Article 4 of the Arizona Revised Statutes (the "**Act**"), City may spend public monies and otherwise assist in providing for the acquisition, construction and rehabilitation of housing and related facilities located in areas that are declared to be housing development areas in Chandler, Arizona.

C. Pursuant to previously adopted Resolution No. 4003, City has declared the area bounded by Palm Lane from Pecos Road to Frye Road, thence east to Arizona Avenue, thence south to Elgin Street, thence east to Delaware Street, thence south to Pecos Road, and thence west to Palm Lane as a housing development area in Chandler, Arizona (the "**Housing Development Area**").

D. In 2008, the Parties entered into a written loan agreement pursuant to which City agreed to make loans to Developer in a total aggregate sum not to exceed \$235,000.00 for Developer to acquire up to five (5) residential parcels within the Housing Development Area for the purpose of Developer constructing new or improving existing single-family homes and thereafter selling the parcels to qualified low-income families.

E. Thereafter, Developer used a portion of the loans in the amount of \$57,500.00 to acquire fee simple title to that certain real property located at 83 East Kesler Lane, Chandler, Arizona, and legally described in attached Exhibit A ("**Property #1**"), and provided to City a promissory note dated December 15, 2008 (the "**Note**") secured by a deed of trust recorded on Property #1 with the Maricopa County Recorder on February 13, 2009, as Instrument No. 2009-0125569 (the "**Deed of Trust**"), to memorialize the loan arrangement and the rights and obligations of the Parties thereunder.

F. Pursuant to the Note, the full amount of \$57,500.00 loaned to Developer is due and payable on or before December 15, 2011 (the "**due date**"), but will be deemed forgiven in its entirety if Developer has completed construction or improvement of a single-family home and is marketing or closing on the sale of Property #1, as improved, by the due date.

G. Developer has not commenced and will not have completed the improvement and/or sale of Property #1 before the due date. Developer does desire to acquire a new residential property, which is located at 354 South Dakota Street, Chandler, Arizona, and legally described in attached Exhibit B ("Property #2"), which is situated within the Housing Development Area and which will be improved and sold as a single-family residence available to a qualified low-income family. Developer is willing to convey Property #1 to City for the purpose of satisfying Developer's repayment obligation under the Note and Deed of Trust if City will provide a secured loan to Developer for the acquisition and development of Property #2.

H. City is willing to accept the conveyance of Property #1 and forgive the obligation under the Note and Deed of Trust. City is also willing to loan to Developer for the acquisition and development of Property #2 the same amount as stated in the Note pursuant to a new note and new deed of trust on Property #2, whose terms and conditions shall be substantially the same as in the Note and Deed of Trust.

2. **Conveyance and Escrow of Property #1.**

A. Agreement and Escrow. This Agreement, together with Escrow Agent's printed form Escrow Instructions, shall constitute a binding agreement between the Parties pursuant to which Developer shall convey to City and City shall acquire from Developer fee title to Property #1 upon the terms and conditions stated herein, and shall define the terms of the escrow created with Escrow Agent. Escrow Agent shall also serve as title insurer for the acquisition of Property #1 under this Agreement. If there is any conflict or inconsistency between the printed form Escrow Instructions and this Agreement, the latter shall prevail.

B. Scope of Property #1. Property #1 shall include the land located at 83 East Kesler Lane and legally described in Exhibit A, together with: (i) all rights, privileges, easements and appurtenances thereto, whether recorded or not recorded, including without limitation, all of Developer's right, title and interest in and to any development rights, air rights, rights in adjoining streets and alleyways, and water and water rights used in connection with the real property, and all minerals, oil, gas, and other hydrocarbon substances thereon or thereunder (except as otherwise reserved of record); (ii) those improvements and fixtures now or hereafter located on the aforementioned land, including, without limitation, all buildings and structures and any fixtures therein, along with any construction warranties in connection therewith, any landscaping, walls, fencing, gates, slabs, sidewalk, water softener or parking improvements thereon; and (iii) any items of personal property that are affixed to the improvements or the land and any equipment necessary to operate the heating, ventilation and air conditioning systems for any of the improvements.

C. Consideration for the Conveyance. The consideration provided by City to Developer for the conveyance of Property #1 free and clear at the Close of Escrow shall be as follows: City shall deem Developer's obligation under the Note and Deed of Trust to have been satisfied, and City shall execute and provide such documentation as is necessary to give notice of satisfaction of the obligation under the Note and to release any lien created by the recording of the Note.

D. Escrow. The sale contemplated under this Section 2 of this Agreement shall be consummated through Escrow to be opened upon the execution of this Agreement and a copy thereof being deposited with Escrow Agent, whose name and office address are as follows: First American Title Insurance Company, National Commercial Services, 2525 East Camelback Road, Suite 300, Phoenix, AZ 85016. Close of escrow shall take place at the office Escrow Agent on or before 5:00 p.m., Arizona time, on February 28, 2011, provided that all title requirements and all prerequisites and contingencies have been met or occurred, or upon such other date as City and Developer hereafter agree upon in writing.

E. Documents to be Delivered for the Closing. As a prerequisite for closing escrow, the following documents, instruments and other items shall have been deposited into escrow on or before the date of closing:

(1) Developer shall have deposited the following:

(a) A general warranty deed, in form acceptable to City, conveying Property #1 to City subject to all matters of record that have been approved in writing by City;

(b) A bill of sale, in form acceptable to City, transferring to City title and possession of any personal property located on Property #1 at time of Closing;

(c) An affidavit or estoppel certificate, in form acceptable to City, stating that there are no leases affecting Property #1, or otherwise itemizing all leases, identifying each lessee, date of lease, terms and any options to renew, and stating that none of the leases referred to therein contain options to purchase;

(d) Any document required by the Arizona Department of Water Resources and/or otherwise necessary for (i) the transfer by Developer to City of all of Developer's right, title and interest in and to any and all ground and/or surface water rights appurtenant to or owned or used in connection with Property #1; (ii) the transfer or assignment of any claims in any water rights proceedings or adjudications, and (iii) the notation of such transfer on any ownership records maintained by the Arizona Department of Water Resources or other applicable public records;

(e) Any release documents in form and substance reasonably satisfactory to City, executed by all appropriate parties, releasing any monetary liens, leases, and/or encumbrances against Property #1 that Developer is required by the terms of this Agreement to have released, except as noted in subparagraph 2.E(2) below;

(2) City shall have deposited a document, in form and substance reasonably satisfactory to Developer, declaring that the Developer's obligation under the Note has been fully satisfied and releasing the Deed of Trust as a lien against Property #1;

(3) Additional documents shall be provided as follows:

(a) The Parties shall jointly provide all other documents or instruments necessary to satisfy requirements for the title insurance to be provided to City in connection with this transaction;

(b) Escrow Agent shall prepare and provide a "closing" or "pre-audit settlement" statement, in form and substance satisfactory to the Parties.

(4) All of the above mentioned documents and instruments shall be duly executed and, where appropriate, acknowledged.

F. Closing Items. At Close of Escrow, the transaction providing for the conveyance of Property #1 shall be consummated by Escrow Agent (i) delivering to City or recording, as appropriate, the documents and instruments referred to in paragraph 2.E(1); and (ii) delivering to Developer or recording, as appropriate, the documents referred to in paragraphs 2.E(2).

G. Title Policy. At Close of Escrow, Escrow Agent shall issue or cause to be issued in favor of City an ALTA standard coverage owner's policy of title insurance insuring title to Property #1 in the amount of \$57,500.00, subject only to (a) the usual exceptions, conditions and stipulations contained in the printed form of such a standard coverage policy, and (b) those title defects or exceptions which are listed in the Title Report (defined below), and which are deemed waived or approved by Buyer in accordance with paragraph 5.1 below (the "Title Policy").

H. City's Contingencies. City's obligation to close under this Agreement is further subject to satisfaction of the following conditions precedent (any or all of which may be waived by City, in its sole discretion, but only in writing signed by City's duly authorized agent):

(1) Status of Title. As soon as reasonably possible after the Opening of Escrow, Escrow Agent shall provide City and Developer with a preliminary report of the title to the Property, disclosing all matters of record which relate to the title to the Property, and Escrow Agent's requirements for both closing the Escrow created by this Agreement and issuing the Title Policy. At such time as City receives the preliminary title report (and any amended report adding additional title exceptions) (the "Title Report"), **Escrow Agent shall also cause legible copies of all instruments referred to in the Title Report to be furnished to City.** City shall have ten (10) days after receipt of the Title Report and the furnishing of all instruments described in the Title Report to make objection in writing to Developer and Escrow Agent as to any matter shown thereon. If City fails to object within this period, the condition of title to the Property shall be deemed approved. If City does object to any matter disclosed in the Title Report, Developer may elect to remove such objection before Close of Escrow. If Developer does not elect to remove such objection, or if any such matter cannot be removed after Developer's attempts to do so, Developer shall so notify City and Escrow Agent, in writing, within ten (10) days after receipt of a written objection from City, and City shall elect in writing to Developer and Escrow Agent within ten (10) days after receipt of Developer's notice either: (i) to cancel the Escrow and this Agreement without any penalty, charge or cost to City or

Developer; or (ii) to close Escrow, waiving such objections and taking title subject to such matters. Failure to give notice to Developer of City's election shall constitute an election to waive the objection.

(2) Additional Encumbrances. Except for matters which are to be released at or as part of the Close of Escrow, Developer shall not voluntarily and affirmatively place, or cause to be placed, any liens or encumbrances on the title to the Property from the date of this Agreement through Close of Escrow or thereafter.

I. Additional Contingency to Closing. Notwithstanding any other condition or contingency, the Close of Escrow shall not take place unless and until City shall have made a loan to Developer in the sum of \$57,500.00 for the purpose of acquiring and developing Property #2 for affordable housing for a low income family in accordance with all of the terms and conditions set out in Section 3 below.

J. Developer's Representations and Warranties. Developer does represent, covenant and warrant to City as follows:

(1) Developer shall not encumber Property #1 or any part thereof or interest therein, or assign, convey, lease or transfer any part thereof or interest therein. To the best of Developer's knowledge, there is no existing default under any encumbrance on Property #1.

(2) To the best of Developer's knowledge, except as may be reflected in the Title Report, there are no claims, actions, suits, or other proceedings pending or threatened by any governmental department or agency or any corporation, partnership, entity, or person whomsoever, nor any voluntary actions or proceedings contemplated by Developer, which in any manner or to any extent may detrimentally affect City's right, title, or interest in and to the Property or the value of the Property or Developer's ability to perform Developer's obligations under this Agreement.

(3) No work has been performed or is in progress at the Property and no materials have been furnished to the Property for which payment will not be made in a timely manner.

(4) Developer has full power, authority and legal capacity to execute, deliver, and perform this Agreement and all related documents or instruments. Except as otherwise expressly provided herein, no consent, approval or authorization of any other person or entity is required in connection with Developer's execution or performance of this Agreement.

(5) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will constitute a default or an event which, with notice or the passage of time or both, would constitute a default under, or violation or breach of, any agreement to which Developer is a party or by which Developer may be bound.

K. City's Representations and Warranties. City does represent, warrant and covenant to Developer as follows:

(1) City has full power, authority and legal capacity to execute, deliver, and perform this Agreement and all related documents or instruments. Except as otherwise expressly provided herein, no consent, approval or authorization of any other person or entity is required in connection with City's execution or performance of this Agreement.

(2) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will constitute a default or an event which, with notice or the passage of time or both, would constitute a default under, or violation or breach of, any agreement to which City is a party or by which City may be bound.

L. Costs and Pro-rations.

(1) City shall pay the cost of a standard coverage owner's policy of title insurance and City shall pay the additional premium for the extended coverage ALTA owner's policy and the Endorsements. Developer shall pay the cost of all escrow fees. Any other costs or expenses shall be paid by the party to whom they are specifically allocated hereunder.

(2) All real property taxes, rents and assessments shall be prorated through Escrow as of the Close of Escrow, based upon the most current available information.

M. No Sales Commissions. Each Party represents and warrants to the other that no real estate sales or brokerage commissions or like commissions are or will be due from the other party in connection with this transaction.

O. Risk of Loss. Until the Close of Escrow, Developer shall bear all risk of loss with regard to Property #1.

3. Loan Secured by Deed of Trust on Property #2.

A. Agreement for Loans. City agrees to make a loan to the benefit of Developer in a total aggregate sum not of **\$57,500.00**, and Developer agrees to accept such loan from City, for the purpose of acquiring Property #2, subject to all of the terms, covenants and conditions stated in this Agreement. The loan made by City under this Agreement shall be processed as part of Developer's separate escrow for the purchase of Property #2, which escrow is being done using a separate escrow agent and title company as follows: Kathy L. Brooks, Grand Canyon Title Agency, 10001 W. Bell Road, #107, Sun City, AZ 85351. A copy of this Agreement shall also be deposited with the escrow agent for Developer's purchase of Property #2.

B. Security and Terms of a Loan. The loan made by City under this Agreement shall be evidenced by a promissory note substantially in the form shown in attached Exhibit C (the "note") secured by a deed of trust substantially in the form shown in attached

Exhibit D (the "deed of trust"), which shall be recorded against Property #2 so that it holds the first lien position on Property #2. The note shall be non-interest bearing and shall be for a period of three (3) years commencing on the stated date of the note. At the end of the period, or in the event of any earlier default in the terms of the note or the deed of trust, the unpaid balance of the note shall become immediately due and payable in accordance with the terms of the note; *provided, however*, that if Developer has by that date constructed upon Property #2 a single-family residence, whose design has been approved by City through its Director of Transportation & Development, and Developer is marketing Property #2 as improved, or Property #2 as improved has been sold pending close of escrow, to a low-income family, then City shall deem Developer's repayment obligation under the note to be forgiven, and the Chandler City Manager or his/her designee shall execute and provide to Developer for recordation a document appropriate to release the lien created by the recording of the deed of trust.

C. Disbursement of Loan Proceeds. If Developer has satisfied the conditions precedent set forth in Paragraph 3.D of this Agreement and is otherwise in full compliance with the terms and conditions of this Agreement, then, upon written request of the Developer, City shall disburse loan funds for the purchase of Property #2. Any such disbursement shall be made payable and delivered to the escrow agent escrowing Developer's purchase of Property #2 on or before the date escrow is scheduled to close, along with written instructions to apply the funds so disbursed toward the purchase price of Property #2, with any remaining funds from the \$57,500.00 to be disbursed to Developer for the purpose of renovating Property #2.

D. Conditions Precedent to Making a Loan. City shall not be obligated to make the loan or disburse loan funds for Developer's purchase of Property #2 unless and until the following conditions precedent shall first have been satisfied:

(1) There shall have been furnished to City a commitment for title insurance for a current form ALTA lenders policy (title commitment) issued by a title insurance company acceptable to City (the "title company") in form satisfactory to City establishing that the title company is prepared to issue its lenders policy in the amount of the loan to insure that City shall be the holder of a first or senior lien upon Property #2, free of encumbrances and other exceptions to title other than those approved in advance by City, and not subordinated to any interests.

(2) Closing of the escrow for the purchase of Property #2 is pending and Developer has executed, completed and deposited the note and the deed of trust for the loan from Chandler with the escrow agent for the Property #2 transaction.

(3) Developer has acquired, or will acquire at close of escrow, good and marketable fee simple title to Property #2, free and clear of all liens, charges, claims, options, encumbrances and other matters, except as may be specifically approved in writing by Chandler in its sole discretion.

(4) Developer shall provide Chandler with satisfactory evidence that all taxes and assessments liened against or affecting Property #2 have been paid current or will be paid current as of the date the loan closes.

(5) Developer shall provide Chandler with a proper borrowing resolution or consent, which expressly authorize Developer to obtain the loan, provide security therefore and execute this Agreement, the note and the deed of trust.

E. Compliance with all applicable local law. Developer shall comply with all codes, ordinance, regulations and other laws applicable to residential construction in City of Chandler, and nothing herein shall be construed to constitute a waiver thereof.

F. Closing costs and title insurance. Developer shall pay all costs, expenses, fees, and charges of any type applicable to the closing of the loan, which shall include, but not be limited to, recording costs and the cost of the lender's title insurance policy.

G. Developer's Representations. Developer makes the following representations, which are duly relied upon by Chandler in making each loan under this Agreement:

(1) Developer has reviewed the Act and believes that it is eligible under the Act to receive the loans described herein that are made pursuant to the Act.

(2) Developer is a duly formed nonprofit corporation under the laws of the State of Arizona, is qualified to transact business in the State of Arizona and has all requisite power and authority to own its properties and to engage in the business it conducts. Habitat for Humanity, Central Arizona, is the exact legal name of Developer. Developer does not transact business under any name other than Habitat for Humanity, Central Arizona.

(3) Developer is not in default with respect to any of its debts or obligations.

(4) Developer has full power and authority to enter into, incur and perform the obligations under this Agreement, the note and the deed of trust, and has taken all action necessary to authorize the execution, delivery and performance of this Agreement, the note and the deed of trust.

(5) The person signing this Agreement and who will sign the note and the deed of trust for and on behalf of Developer is and will be authorized to do so for and on behalf of Developer.

(6) Except as disclosed by Developer to Chandler in writing, there are no actions, suits or proceedings pending, or to the best of Developer's knowledge, threatened in any court or before any governmental authority against or affecting Developer or any of the subject property, which would materially impair any of Property #2 or Developer's ability to

perform the covenants or obligations required to be performed under any note or deed of trust provided to Chandler from Developer in obtaining a loan under this Agreement, or involving the validity, enforceability, or priority of any such note or deed of trust.

(7) To the best of Developer's knowledge, Developer has complied with all applicable laws with respect to any restrictions, specifications or other requirements pertaining to the conduct of its business. Developer is not in default with respect to any governmental regulations.

H. Independent Contractor. Developer is an independent contractor in the performance of all activities, functions, duties and obligations pursuant to this Agreement. Developer and Chandler are not and shall not be considered as joint venturers, partners or agents of each other. Developer's employees, agents, and subcontractors shall not be considered as officers, employees, agents or subcontractors of Chandler. Chandler and Developer hereby agree not to represent to anyone that they are agents of one another or have authority to act on behalf of one another.

I. No Assignment or Transfer. This Agreement and any proceeds, or any right to proceeds, from the loans contemplated to be made by Chandler under this Agreement are not assignable or otherwise transferable by Developer without the prior written approval of Chandler. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement without the prior written consent of Chandler.

J. Organizational Documents. Developer shall provide Chandler with certified copies of all organizational document of Developer, including its articles of incorporation and bylaws, and a certificate of good standing from the Arizona Corporation Commission, each certified by the Arizona Corporation Commission as of a recent date acceptable to Chandler.

4. Remedies.

A. In the event of a default by City, Developer, as its sole remedy, may cancel this Agreement fifteen (15) days after Developer gives written notice to City and Escrow Agent that City is in default, if within such period such default has not been cured by City.

B. In the event of default by Developer, City, as its sole remedy, may cancel this Agreement fifteen (15) days after City gives written notice to Developer and Escrow Agent that Developer is in default, if within such period such default has not been cured by Developer.

5. Notices. All notices, consents, approvals and waivers required or permitted hereunder shall be given in writing and shall be effective upon personal delivery or direct facsimile transmission, or two (2) business days after being deposited in the U.S. Mail, registered or certified, return receipt requested, postage prepaid, or one (1) business day after being deposited with any commercial air courier or express service. All such notices shall be addressed

as follows or to such other address or addresses as the parties or Escrow Agent may from time to time specify in writing delivered as provided in this paragraph:

If to Escrow Agent for Property #1:

First American Title Insurance Company
National Commercial Services
2525 E. Camelback Road, Suite 300
Phoenix, Arizona 85016
Attn.: Cathy Fabritz
Phone: (602) 567-8115
Fax No.: (602)567- 8101

If to escrow agent for Property #2

Grand Canyon Title Agency
10001 W. Bell Road, #107
Sun City, AZ 85351
Attn.: Kathy L. Brooks
Phone: (623) 875-3387
Fax No.: (623) 875-7103

If to Developer: Habitat for Humanity, Central Arizona
115 East Watkins Street
Phoenix, AZ 85004
Phone: (623) 583- 2417
Fax No.: (623) 583- 2705

If to City: City of Chandler
Neighborhood Resources Division
P.O. Box 4008, Mail Stop 600
235 S. Arizona Avenue
Chandler, Arizona 85244-4008
Attn.: Jennifer Morrison
Phone: (480) 782-4320
Fax No.: (480) 782- 4350

6. **Further Assurances.** Promptly upon the request of the other or upon the request of Escrow Agent, each party shall do such further acts and shall execute, have acknowledged and deliver to the other party or to Escrow Agent, as appropriate, any and all further documents or instruments reasonably requested in order to carry out the intent and purpose of this Agreement. The Parties agree to do the same upon the request of the escrow agent in the transaction for Parcel #2.

7. **General Provisions.**

A. **Modification and Waiver.** Except as expressly provided herein to the contrary, no supplement, modification or amendment of any term of this Agreement shall be deemed binding or effective unless in writing and signed by the parties hereto. No waiver of any of the provisions of this Agreement shall constitute or be deemed a waiver of any other provision, nor shall any waiver be a continuing waiver. Except as otherwise expressly provided herein, no waiver shall be binding unless executed in writing by the party making the waiver.

B. **Exhibits.** The Exhibits referred to herein and attached hereto (the "Exhibits") are incorporated herein by reference.

C. **Litigation Expenses and Attorneys' Fees.** In the event of litigation involving this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its costs and expenses incurred in such action from the other party, including without limitation the cost of reasonable attorneys' fees as determined by the judge of the court.

D. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this Agreement shall be deemed invalid or prohibited thereunder, such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect.

E. **Entire Agreement.** This Agreement, including the Exhibits attached hereto, constitutes the entire agreement among the parties. All terms and conditions contained in any other writings previously executed by the parties and all prior and contemporaneous arrangements and understandings between the parties are superseded hereby. No agreements, statements or promises about the subject matter hereof shall be binding or valid unless they are contained herein.

F. **Successors and Assigns.** This Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the parties to this Agreement and their respective heirs, executors, administrators, personal representatives, successors and assigns.

G. **Counterparts.** This Agreement may be executed by the signing in counterparts. The execution of this instrument by each of the parties signing a counterpart hereof shall constitute a valid execution, and this instrument and all of its counterparts so executed shall be deemed for all purposes to be a single instrument.

H. **Applicable Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Arizona.

I. **Headings and Construction.** The descriptive headings of the paragraphs of this Agreement are inserted only for convenience and shall not define, limit, extend, control or affect the meaning or construction of any provision herein. Where the context requires herein,

the singular shall be construed as the plural, and neuter pronouns shall be construed as masculine and feminine pronouns, and vice versa. This Agreement shall be construed according to its fair meaning and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement.

J. Survival. Except as expressly set forth herein, all representations, warranties and covenants set forth herein shall survive the Close of the Escrow.

K. Time of Essence. Time is of the essence of this Agreement, and City and Developer hereby agree to perform each and every obligation hereunder in a prompt and timely manner.

L. Possession. Developer shall deliver possession and occupancy to Property #1 along with access to all keys and/or means to operate all locks to City on or before 5:00 P.M., Arizona time, on the Close of Escrow date.

CITY: CITY OF CHANDLER, an Arizona municipal corporation

HABITAT FOR HUMANITY, CENTRAL ARIZONA, an Arizona non-profit corporation

By: _____

By: Roger C. Schweigert

Its: _____

Its: President

APPROVED AS TO FORM:

CITY ATTORNEY CAE

Accepted this _____ day of _____, 2011

ESCROW AGENT: First American Title Insurance Company

By: _____

Its: _____

EXHIBIT "A"

THE EAST HALF OF LOT 4, OF KESLER ADDITION TO CHANDLER ARIZONA,
ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY
RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 27 OF MAPS,
PAGE 24.

EXHIBIT "B"

THAT PART OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 33;
RUNNING 333.68 FEET WEST;
THENCE NORTH 250 FEET TO THE TRUE POINT OF BEGINNING;
THENCE WEST 150 FEET;
THENCE NORTH 80.61 FEET;
THENCE EAST 150 FEET;
THENCE SOUTH 80.61 FEET TO THE TURE POINT OF BEGINNING.

Exhibit "C"

**CITY OF CHANDLER
HOUSING DEVELOPMENT PROJECT
SECURED PROMISSORY NOTE
3-YEAR FORGIVABLE LOAN**

DATE: February 28, 2011

MAKER(S): Habitat for Humanity, Central Arizona

PROPERTY

ADDRESS: 354 South Dakota Street, Chandler, Arizona 85225

For value received, the undersigned Makers do/does promise to pay to the City of Chandler, an Arizona municipal corporation, or its successor (hereinafter, the "City"), at Mail Stop #101, P.O. Box 4008, Chandler, Arizona 85244-4008, or at such other place as the City may from time-to-time designate, in lawful money of the United States of America, the principal sum of **FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$57,500.00)**. This Note accrues no interest and requires no monthly payment, and installment payments are not required to be made by the Maker(s) during the term of this Note. However, the Maker(s) may prepay the principal sum of this Note, in whole or in part, at any time without penalty or premium. Any prepayment shall be applied against the principal sum of this Note.

The term of this Note shall be for a period of three (3) years commencing on the date of this Note as stated above and terminating on the third anniversary of said commencement date at which time the entire unpaid balance of this Note shall become immediately due and payable; *provided, however*, that, if the Maker(s) has/have by that date constructed upon the parcel of real property, whose address is shown above (the "subject property"), a single-family residence having a design approved by the City, and Developer is marketing the subject property as improved, or the subject property as improved has been sold pending close of escrow, to a low-income family, then the unpaid balance of this Note will be deemed forgiven in its entirety and no repayment will be required of the Maker(s).

The Maker(s) and all persons who may become liable for payment of this Note hereby agree that: (a) they shall pay all costs and expenses of collection of this Note, including reasonable attorneys' fees; and (b) at the City's option, the entire unpaid balance of this Note, together with any and all other obligations of the Maker(s) and all other persons liable under this Note, shall become immediately due and payable, without notice or demand, with interest thereon after the date of the exercise of such option at the rate of zero percent (0%) until paid: (i) if default be made in the performance or observance of any of the covenants, promises or provisions of this Note; (ii) in the event garnishment, attachment, levy, execution, or assessment of deficiency is issued against any of the property or assets of the Maker(s); (iii) in the event of an assignment of the Maker(s) for benefit of creditors, application for appointment of trustee or receiver, or the filing of a voluntary or involuntary petition in bankruptcy (except if any involuntary petition in bankruptcy is dismissed within thirty (30) days); or (iv) in the event that the City in good faith

believes that the prospect of payment by the Maker(s), or any person liable hereunder, is impaired.

At the City's option, the unpaid balance of this Note shall further become immediately due and payable, without notice or demand, together with any interest as stated in the immediately preceding paragraph: (a) upon any sale, conveyance, transfer or other divestment of the title or other interest of the Maker(s) in and to the subject property, whether voluntary or involuntary, including by operation of law.

The Maker(s) and all persons who are or may become liable for the payment hereof further agree: (a) to be jointly and severally bound hereby; (b) to severally waive demand, diligence, presentment for payment, protest and demand, notice of extension, dishonor, protest, demand and non-payment of this Note; (c) to severally waive any homestead or exemption right against said debt; and (d) that the acceptance by the City of any performance or failure of performance which does not comply strictly with terms of this Note shall not be deemed a waiver of any right of the City.

All remedies of the City hereunder are cumulative and shall be in addition to any and all other rights or remedies available to the City at law or in equity. This Note is and shall be secured by a Deed of Trust placed on the subject property.

If any provision of this Note, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remaining provisions hereof shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law. This Note shall be governed and construed according to the laws of the State of Arizona.

IN WITNESS WHEREOF, this Note and the Deed of Trust securing the Note have been duly executed by the undersigned as of the date written above.

MAKER: HABITAT FOR HUMANITY, CENTRAL ARIZONA, an Arizona nonprofit corporation

By: _____

Its: _____

Exhibit "D"

When recorded, mail to:
City of Chandler
Housing & Redevelopment Division
Mail Stop #101
P.O. Box 4008
Chandler, AZ 85244-4008

**CITY OF CHANDLER
HOUSING DEVELOPMENT PROJECT
DEED OF TRUST AND ASSIGNMENT OF RENTS**

DATE: February 28, 2011

PROPERTY ADDRESS: 354 South Dakota Street, Chandler, Arizona 85225

TRUSTOR: Habitat for Humanity, Central Arizona, an Arizona nonprofit corporation

TRUSTOR'S MAILING ADDRESS: 115 East Watkins Street, Phoenix, Arizona 85004

BENEFICIARY: CITY OF CHANDLER, an Arizona municipal corporation

BENEFICIARY'S ADDRESS: Mail Stop #101, P.O. Box 4008, Chandler, AZ 85244-4008

TRUSTEE: Glenn A. Brockman, Assistant Chandler City Attorney and a member of the State Bar of Arizona, Mail Stop #602, P.O. Box 4008, Chandler, AZ 85244-4008

WHEREAS, Trustor is the owner in fee simple of the residential land and improvements located thereon as Property in Maricopa County, State of Arizona, legally described as:

That part of the Southeast quarter of Section 33, Township 1 South, Range 5 East of the Gila and Salt River Base and Meridian, described as follows: BEGINNING at the Southeast corner of the Northwest quarter of the northeast quarter of the Southeast quarter of Section 33, a distance of 333.68 feet; Thence North 250 feet to the TRUE POINT OF BEGINNING; Thence West 150 feet; Thence North 80.61 feet; Thence East 150 feet; Thence South 80.61 feet to the TRUE POINT OF BEGINNING.

This Deed of Trust made between Trustor, Trustee and Beneficiary above named,

WITNESSETH: That Trustor irrevocably grants, conveys, transfers and assigns to Trustee in Trust, with Power of Sale, the above-described real property and all buildings, improvements and fixtures located thereon or hereinafter erected thereon, together with the leases, rents, issues profits or income thereof (all of which are hereinafter called "property income"); SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such property income; AND SUBJECT TO existing taxes,

assessments, liens, encumbrances, covenants, conditions, restrictions, rights of way and easements of record.

FOR THE PURPOSE OF SECURING:

- A. Performance of each agreement of Trustor herein contained.
- B. Payment of the indebtedness evidenced by that promissory note of even date herewith, and any extension or renewal thereof, in the principal sum of \$57,500.00 executed by Trustor in favor of Beneficiary.
- C. Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or Trustor's successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete and restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; and, do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.
2. To provide, maintain and deliver to Beneficiary fire insurance policies satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured thereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.
3. To appear in and defend any action or proceeding purporting to affect the security thereof or the rights or powers of Beneficiary or Trustee, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary to foreclose this Deed of Trust.
4. To pay: before delinquent, all taxes and assessments affecting said property; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust, including, without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Partial Release and Partial Reconveyance or Deed of Release and Full Reconveyance, and all lawful charges, costs and expenses in the event of reinstatement of, following default in, this Deed of Trust or the obligations secured hereby.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation to do so and without notice or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security thereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

5. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from date of expenditure at the same rate as is provided for in the note(s) secured by this Deed of Trust or at the highest legal rate, whichever be the greater rate. Any amounts so paid by Beneficiary or Trustee shall become part of the debt secured by this Deed of Trust and a lien on said premises or shall become immediately due and payable at option of Beneficiary or Trustee.

IT IS MUTUALLY AGREED:

6. That any award of damages in connection with condemnation or any such taking, or for injury to the property by reason of public use, or for damages for private trespass or injury thereto, is assigned and shall be paid to Beneficiary as further security for all obligations secured hereby (reserving unto the Trustor; however, the right to sue therefore and ownership thereof subject to this Deed of Trust), and upon receipt of such monies Beneficiary may hold the same as such further security, or apply or release the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

7. That time is of the essence of this Deed of Trust, and by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

8. That at any time or from time-to-time, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note(s) for endorsement and without liability therefore, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the property affected by the Trustee's action be credited on the indebtedness, the Trustee may: (a) release and reconvey all or part of said property; (b) consent to the making and recording, or either, of any map or plat of the property or any part thereof; (c) join in granting any easement thereon; (d) join in or consent to any extension agreement subordinating the lien, encumbrance or charge thereof.

9. That upon written request of Beneficiary stating that all sums secured hereby have been paid and upon surrender of this Deed of Trust and said note(s) to Trustee for cancellation, and upon payment of its fees, Trustee shall by Deed of Release and Full Reconveyance release and reconvey, without covenant or warranty, express or implied, the property then held hereunder.

The recitals in such Deed of Release and Full Reconveyance of any matters shall be conclusive proof of the truthfulness thereof. The grantee in such Deed of Release and Full Reconveyance may be described as “ The Person or Persons Legally Entitled Thereto.”

10. That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of this Trust, to collect the property income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such property income as it becomes due and payable. Upon any such default Beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such property income, including reasonable attorney’s fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such property income and the application thereof as aforesaid, shall not cure or waive any default or notice of Trustee’s sale hereunder or invalidate any act done pursuant to such notice.

11. That upon default by Trustor in the payment of any indebtedness hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof and of election to cause to be sold said property under this Deed of Trust. Beneficiary also shall deposit with Trustee this Deed of Trust, said note(s) and all documents evidencing expenditures secured hereby.

Trustee shall record and give notice of Trustee’s sale in manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, said property at public auction at the time and place affixed by it in said notice of Trustee’s sale to the highest bidder for cash in lawful money of the United States of America, payable at time of sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to such purchaser its Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor, Trustee or Beneficiary, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney’s fees, Trustee shall apply the proceeds of the sale to payment of all sums then secured hereby and all other sums due, under the terms hereof, with accrued interest, and, the remainder, if any, to the person or persons legally entitled thereto, or as provided in A.R.S. Sec. 33-812. To the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgment for any balance due hereunder.

The purchaser at the Trustee’s sale shall be entitled to immediate possession of the property against Trustor and shall have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statutes, together with costs and reasonable

attorney's fees. In lieu of sale pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have all other rights and remedies available to it hereunder and at law or in equity. All rights and remedies shall be cumulative.

12. That Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee here shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.

13. That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder of the note(s) secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

14. That Trustee accepts this Trust when this Deed of Trust duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee. In the event Trustee is made a party in any legal or court proceeding as a result of litigation between Trustor and Beneficiary or between a third party and either or both of Trustor and/or Beneficiary, the attorney's fees and costs of Trustee shall be paid by either Trustor or Beneficiary, whichever is the non-prevailing party.

15. Time is of the essence of this Deed of Trust and each and every provision hereof.

16. Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to Trustor at Trustor's mailing address hereinbefore set forth. All notices required hereby shall be sent to the addresses indicated above unless such party shall have recorded a Request for Notice pursuant to A.R.S. Sec. 33-809.A in the county recorder's office of the county where the property encumbered hereby is located, indicating a different address.

17. In the event that Trustor shall sell, convey, or alienate or otherwise transfer the subject property, or any part thereof, or any interest therein, or shall be divested of title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of Beneficiary being first obtained, said Beneficiary, to the fullest extent provided by law, shall have the right at its option to declare any indebtedness or obligation secured by this Deed of Trust, irrespective of the maturity date specified in the Note evidencing the same, immediately due and payable.

DATED: TRUSTOR: HABITAT FOR HUMANITY, CENTRAL ARIZONA, an
Arizona nonprofit corporation

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

This instrument was acknowledged before me this _____ day of _____, 2011, by _____, the _____ of Habitat For Humanity, Central Arizona, an Arizona nonprofit corporation, for the corporation.

Notary Public

My commission will expire:
