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MEMORANDUM NEIGHBORHOOD RESOURCES- COUNCIL MEMO NR12-026

DATE: JULY 10, 2012

TO: MAYOR AND MEMBERS OF THE CITY COUNCIL

THRU: RICH DLUGAS, CITY MANAGER RD
JEFF CLARK, FIRE CHIEF ^{JC}
JENNIFER MORRISON, NEIGHBORHOOD RESOURCES DIRECTOR ^{JM}

FROM: BARBARA BELLAMY, CDBG SUPERVISOR ^{BB}

SUBJECT: REQUEST FOR THE AUTHORIZATION TO SUBORDINATE THE EXTERIOR IMPROVEMENT LOAN PROGRAM LIEN ON PROJECT NUMBER EIG10-0006 LOCATED AT 2310 E. BUFFALO ST. IN THE AMOUNT OF \$10,000

RECOMMENDATION: Staff recommends that City Council authorize the subordination of the Exterior Improvement Loan Program lien on project number EIG10-0006 located at 2310 E. Buffalo St. in the amount of \$10,000.

BACKGROUND AND DISCUSSION: In 2011, the owners of a single-family, owner occupied home at 2310 E. Buffalo St. received a \$10,000 loan through the City of Chandler's Exterior Improvement Loan Program. The City loan is a 5-year forgivable loan, with 20% of the loan forgiven each year through 2016, secured by a deed of trust recorded as a lien against the home. The lien is in third position behind two previously recorded liens.

The owners are now seeking to refinance the home through a Home Affordable Refinance Program (HARP) loan which will allow the owners to refinance their first lien mortgage at a lower interest rate. The owners will receive no cash out as a result of the refinancing transaction. The new loan is for \$126,549.00. In order to obtain the loan, the lender requires that the City lien be subordinated to the new loan so as to remain in third position.

FINANCIAL IMPLICATIONS: The City will not be prejudiced by the refinancing or the subordination. The City's lien is in third position and will remain so after the refinancing. The refinancing will reduce the amount of the owner's monthly payments on their first lien obligation, which reduces the likelihood of default on the first lien. The City lien will not be released until the City loan is fully forgiven in 2016.

PROPOSED MOTION: Move to approve the authorization to subordinate the Exterior Improvement Loan lien on Project EIG10-0006 located at 2310 E Buffalo St. in the amount of \$10,000.

Attachment A: Subordination Agreement

Attachment B: Letter from Desert Schools Federal Credit Union

Recording Requested by:

When recorded mail to:

City of Chandler
Neighborhood Resources
P.O. Box 4008
Chandler, AZ 85244-4008

**ATTACHMENT A
SUBORDINATION AGREEMENT
(Existing to New)**

Escrow No. 3612317a

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS AGREEMENT, made this day of July 2012 by,

Amanda Hamilton and Kenneth Hamilton, wife and husband, as community property state
Owner of the land hereinafter described and hereinafter referred to as "Owner", and

City of Chandler, an Arizona Municipal Corporation,

present owner and holder of the Deed of Trust and Note first hereinafter described and hereinafter referred to as
"Beneficiary";

WITNESSETH

THAT WHEREAS, Amanda Hamilton and Kenneth Hamilton executed a Deed of Trust dated March 16, 2011 to City of Chandler (Exterior Improvement Loan), as Trustee, covering:

LOT 216, COLONIAL CORONITA UNIT TWO, ACCORDING TO BOOK 207 OF MAPS, PAGE 47, RECORDS OF MARICOPA COUNTY, ARIZONA.

to secure a Note in the sum of 10,000.00, dated 03/16/2011 in favor of City of Chandler, which Deed of Trust was recorded March 21, 2011 in Docket/Book _____, Page _____, or Instrument No. 2011-240866 of said County; and

WHEREAS, Owner has executed, or is about to execute, a Deed of Trust and Note in the sum of \$129,000 in June 2012 in favor of Desert Schools Federal Credit Union,

hereinafter referred to as "Lender", payable with interest and upon the terms and conditions described therein, which Deed of Trust is to be recorded concurrently herewith; and

WHEREAS, it is a condition precedent to obtaining said loan that said Deed of Trust last above mentioned shall unconditionally be and remain at all times a lien or charge upon the land hereinbefore described, prior and superior to the lien or charge of the Deed of Trust first above mentioned; and

WHEREAS, Lender is willing to make said loan provided the Deed of Trust securing the same is a lien or charge upon the above described property prior and superior to the lien or charge of the Deed of Trust first above mentioned and provided that Beneficiary will specifically and unconditionally subordinate the lien or charge of the Deed of Trust first above mentioned to the lien or charge of the Deed of Trust in favor of Lender; and

WHEREAS, it is to the mutual benefit of the parties hereto that Lender make such loan to Owner; and Beneficiary is willing that the Deed of Trust securing the same shall, when recorded, constitute a lien or charge upon said land which is unconditionally prior and superior to the lien or charge of the Deed of Trust first above mentioned.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in order to induce Lender to make the loan above referred to, it is hereby declared, understood and agreed as follows:

- (1) That said Deed of Trust securing said Note in favor of Lender, and any renewals and extensions thereof, shall unconditionally be and remain at all times a lien or charge on the property therein described, prior and superior to the lien or charge of the Deed of Trust first above mentioned.
- (2) That Lender would not make its loan above described without this subordination agreement.
- (3) That this agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the Deed of Trust first above mentioned to the lien or charge of the Deed of Trust in favor of lender above referred to and shall supersede and cancel, but only insofar as would affect the priority between the Deeds of Trust hereinbefore specifically described, any prior agreement as to such subordination including, but not limited to, those provisions, if any, contained in the Deed of Trust first above mentioned, which provides for the subordination of the lien or charge thereof to another deed or Deeds of Trust or to another mortgage or mortgages.

- (a) He consents to and approved (i) all provisions of the Note and Deed of Trust in favor of Lender above referred to, and (ii) all agreements, including but not limited to any loan or escrow agreements, between Owner and Lender for the disbursement of the proceeds of Lender's Loan;
- (b) Lender is making disbursements pursuant to any such agreement is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part; and
- (c) He intentionally and unconditionally waives, relinquishes, and subordinates the lien or charge of the Deed of Trust first above mentioned in favor of the lien or charge upon said land of the Deed of Trust in favor of Lender above referred to and understands that in reliance upon, and on consideration of, this waiver, relinquishment and subordination specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment, subordination; and
- (d) An endorsement has been placed upon the Note secured by the Deed of Trust first above mentioned that said Deed of Trust has by this instrument been subordinated to the lien or charge of the Deed of Trust in favor of Lender above referred to.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

BENEFICIARY:

OWNER:

City of Chandler

Amanda R Hamilton

City of Chandler

Kenneth L Hamilton

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS SUBORDINATION AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT THERETO.

STATE OF ARIZONA)
) ss.
County of Maricopa)

On _____, before me, the undersigned Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.
WITNESS my hand and official seal.

My Commission Expires: _____ Notary Public

STATE OF ARIZONA)
) ss.
County of Maricopa)

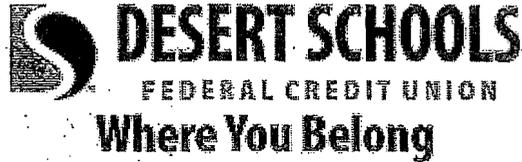
On _____, before me, the undersigned Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
My Commission Expires: _____ Notary Public

APPROVED AS TO FORM

CITY ATTORNEY GAB

ATTACHMENT B



To Whom It May Concern:
Re: Hamilton 2310 E Buffalo Street

The Hamiltons are refinancing their first mortgage with Desert Schools. They are reducing their interest rate from 6.00% to 4.25%. Their payment is going from \$975.88 to \$829.40. The second lien with Desert Schools will be subordinating. The City of Chandler will remain in 3rd lien position.

The HARP program allows the borrowers to receive no more than \$250.00 cash back.

As a condition of the City of Chandler subordination their lien, the member will not be allowed any cash back. The loan will be structured so the member does not receive any cash back.

Thank you

A handwritten signature in cursive script, appearing to read 'Bonnie Seddens', is written over the typed name.

Bonnie Seddens
Bonnie.Seddens@desertschools.org
First Mortgage Processor
Desert Schools Federal Credit Union,
148 N 48th St
Phoenix, AZ 85038
(602) 335-7157
(602) 634-7157