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**MEMORANDUM - LEGAL/NEIGHBORHOOD RESOURCES**

**DATE:** MAY 22, 2013

**TO:** MAYOR AND MEMBERS OF THE CITY COUNCIL

**THRU:** RICH DLUGAS, CITY MANAGER <sup>RD</sup>  
JEFF CLARK, FIRE CHIEF <sup>JC</sup>  
JENNIFER MORRISON, NEIGHBORHOOD RESOURCES DIRECTOR <sup>JM</sup>

**FROM:** ERIC ANDERSON, ASSISTANT CITY ATTORNEY <sup>(EA)</sup>

**RE:** REQUEST FOR AUTHORIZATION FOR THE MAYOR TO EXECUTE AN AGREEMENT FOR THE CITY TO SUBORDINATE ITS DEED OF TRUST FROM COMMUNITY SERVICES OF ARIZONA, INC. REGARDING 298-392 N. MCQUEEN ROAD IN CHANDLER, ARIZONA TO A DEED OF TRUST MADE BY A NEW PURCHASER QUANTUM REALTY PARTNERS, LLC TO ITS LENDER.

RECOMMENDATION: Staff recommends that the City Council authorize the Mayor to execute the agreement attached hereto as Exhibit A for the City to subordinate its Deed of Trust from Community Services of Arizona, (CSA) Inc. regarding 298-392 N. McQueen Road in Chandler, Arizona to a deed of trust made by the new purchaser Quantum Realty Partners, LLC to its lender as set forth in Exhibit A hereto.

BACKGROUND: The City of Chandler receives U.S. Department of Housing and Urban Development (HUD) HOME Investment Partnership funds annually through the Maricopa HOME Consortium. Community Services of Arizona, Inc., a local non-profit, has in the past received HOME funds for the acquisition and rehabilitation of multi-family properties in Chandler to provide affordable rental housing for low to moderate income persons. Currently, CSA owns 16 units in Chandler at 298 – 392 N. McQueen Road for which the City holds a Deed of Trust upon. This Deed of Trust secures a promissory note which requires CSA to maintain the subject housing units according to the rules and regulations of the HOME program including leasing the units as affordable and decent housing for a certified period of affordability. The face amount of the note is approximately \$500,000 but the amount is entirely forgiven if the property is maintained as affordable for twenty years.

The original note and deed of trust were executed by CSA to the City in 1998. In 2004, the City agreed to subordinate its Deed of Trust to a loan made by Arizona Bank & Trust in an approximate amount of \$513,000. Accordingly, the City's Deed of Trust is now in "second position." The current holder of the Bank & Trust loan has initiated foreclosure proceedings due to CSA's default on the loan. A Trustee's Sale is scheduled for June 5, 2013 which, if it occurs, will likely also foreclose the City's Deed of Trust. CSA has an agreement with a potential buyer that will satisfy the Bank & Trust loan and therefore place the property back in good standing. The new buyer, Quantum, is obtaining financing that will pay off the Bank & Trust loan. On Friday, May 17, the City learned that Quantum's financing source will require the City to subordinate its deed of trust in order to close the purchase by Quantum of CSA's interest.

DISCUSSION: Staff recommends that the City agree to subordinate its Deed of Trust to a new loan obtained by Quantum to purchase CSA's interest. If the purchase closes, Quantum will obtain new financing but will be in good standing with that loan. The City's position will be improved because it is currently in second position and stands to have its legal standing with the property adversely affected if the Trustee's Sale proceeds on June 5, 2013. The Quantum purchase will prevent foreclosure of the property and Quantum will be taking the property subject to the City's Deed of Trust and be subject to all of the existing requirements in reference to the operation of the units as affordable housing.

FINANCIAL IMPLICATIONS: The City will not be prejudiced by the refinancing or the subordination. The City's lien is currently in second position and will remain in second position after the refinancing is complete.

PROPOSED MOTION: Move to authorize the Mayor to execute the agreement attached hereto as Attachment A for the City to subordinate its Deed of Trust from Community Services of Arizona, Inc. regarding 298-392 N. McQueen Road in Chandler, Arizona to a deed of trust made by the new purchaser Quantum Realty Partners, LLC to its lender.

## SUBORDINATION AGREEMENT

This Subordination Agreement (the "Agreement") is dated as of this \_\_\_ day of May, 2013, and is by and between the City of Chandler, an Arizona municipal corporation ("City") and QUANTUM REALTY PARTNERS, LLC ("QUANTUM"), an Arizona limited liability company ("QUANTUM") and RLS CAPITAL, INC., an Arizona Corporation ("LENDER").

### RECITALS:

A. QUANTUM has entered into an agreement with Community Services of Arizona, Inc., an Arizona nonprofit corporation ("CSA"), to purchase the following Real Property:

Lots # 2 through 9, Chandler Terrace, according to Book 156 of Maps, Page 44, re-recorded in Book 158, page 24, Assessor's Parcel Numbers 302-71-026 through 033.

(hereinafter "the "Property").

B. The City has previously made a loan ("the Loan") to CSA pursuant to the National Affordable Housing Act, HOME Investment Partnership Program (the "HOME Program") operated by the U.S. Department of Housing and Urban Development ("HUD") for acquisition, construction and/or restoration of the Property.

C. The Loan is evidenced by a Promissory Note between CSA and the City.

D. Payment of the Promissory Note is secured by a separate Deed of Trust and Assignment of Rent as recorded March 26, 1998 in Docket No. 98-0247693, records of the Maricopa County Recorder (the " City Deed of Trust").

E. The City has previously executed a subordination agreement to a Deed of Trust from CSA in favor of Arizona Bank and Trust as recorded March 10, 2004 at Docket No. 2004-0248918 records of Maricopa County Recorder (the "Bank Deed of Trust").

F. QUANTUM intends to purchase CSA's interest in the Property and in the course of such purchase obtain a new loan from LENDER which will be based on a ninety percent (90%) loan to value ratio and satisfy any obligations of CSA to Arizona Bank and Trust and entitle the Parties to a release and reconveyance of the Bank Deed of Trust.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. RECITALS: The above Recitals are incorporated herein by this reference.
2. EFFECTIVE DATE: The terms and conditions of this Agreement will become effective simultaneously with the closing of the sale of the Property from CSA to QUANTUM (the "Closing" or the "Closing Date," as applicable) as between the Parties.
3. ASSUMPTION OF OBLIGATIONS:
  - 3.1 QUANTUM hereby (a) assumes such obligations of CSA on a non-recourse basis under the Promissory Note from CSA to the City as secured by the City Deed of Trust and (b) agree for themselves, their successors and assigns, to be bound by such restrictions for the applicable Affordability Period for each Property.
4. CITY'S CONSENT. For purposes of this transaction only, the City hereby consents to the conveyance of the Property to QUANTUM and the assumption of the obligations by Quantum.
5. SUBORDINATION: QUANTUM is acquiring the Property subject to the City Deed of Trust.
  - 5.1 On the terms and conditions set forth herein, the City, at the Closing, hereby subordinates the priority of the City Deed of Trust to financing and a lien of LENDER in an amount not to exceed \$500,000, but the City Deed of Trust will continue in full force and effect.
  - 5.2 The City Deed of Trust, without further action required from the City, may be subordinated to future financing obtained by QUANTUM subject to the following conditions:
    - 5.2.1 Any existing Deed of Trust or other lien senior to the City Deed of Trust must be satisfied and released in order that, after subordination, the City Deed of Trust is only junior to a maximum of one other lien or Deed of Trust.
    - 5.2.2 The total of all acquisition financing against the Property to which the City Deed of Trust is subordinate shall have a maximum eighty percent (80%) loan to value ratio (80% LTV Ratio) based on the fair market value of the Property.
    - 5.2.3 The fair market value for purposes of determining the LTV Ratio under section 5.2.1 shall be the sum of the acquisition price of the Property, the transactional costs, and the renovation costs.

6. COMPLIANCE WITH HOME PROGRAM REQUIREMENTS: At their sole cost and expense, QUANTUM agrees to comply with any and all statutes, rules and regulations applicable to the Property as set forth in the Promissory Note until such time as the Promissory Note is satisfied.

7. BINDING AGREEMENT AND SUBSEQUENT TRANSFERS: This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

7.1 A "Subsequent Transfer" of the Property includes conveyance of title or other interest of record in and to the Property or any part thereof and includes any conveyance of the ownership interest, or any part thereof. Grant of an easement or other interest in the Property that (A) does not convey legal or beneficial title to the Property from QUANTUM to any other person or entity, (B) does not interfere with or impede use of the Property as required in the Promissory Note, and (C) does not impair or materially limit the City's rights shall not be considered a "Subsequent Transfer" under this section. A change in ownership or management of QUANTUM also shall not be considered a "Subsequent Transfer" under this section.

7.2 If QUANTUM wishes to transfer the Property, or any portion thereof, to a new owner (a "Subsequent Owner"), QUANTUM shall submit to the City, in accordance with the Notice provisions provided in this Agreement, a written notice of proposed assignment with a request for City approval under the City's Approval and Acceleration Rights. Such notice shall include any information pertaining to the transfer and the applicable Property that is reasonably necessary or requested in good faith by the City for the City's consideration of the request and shall demonstrate that all requirements of the Promissory Note and Deed of Trust have been met and that QUANTUM remains in compliance with and is not in default on any such agreements. If the submitted notice fails to demonstrate compliance, the City may continue to proceed with the approval of the transfer but may in its discretion seek additional information, require corrective action or pursue other appropriate remedies to correct or address any areas of noncompliance. City approval of the assignment shall be handled as an administrative matter by the City Manager or designee. The City shall have 90 days from effective receipt of QUANTUM's request to approve or deny the request. The City's approval of the request shall not be unreasonably withheld. If the 90th day falls on a day on which City offices are closed, the timeframe for approval shall extend to the next day on which the City offices are open for business. If the City provides no response approving or denying the request within the timeframe identified herein, then the City's approval for purposes of that transaction only is deemed to have been given.

8. REMEDIES:

8.1 Any breach of this Agreement by QUANTUM shall entitle the City to invoke any and all remedies available to it under the law and this Agreement.

8.2 The City may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such breach or attempted breach, to compel specific performance hereunder, for declaratory relief, and all other forms of non-monetary remedies available under the law or any instrument.

9. NOTICE UNDER A.R.S. §38-511: The City hereby gives notice, as required by Arizona law, of its right pursuant to the terms and requirements of A.R.S. §38-511 to terminate this contract.

10. AUTHORITY OF PARTIES AND REPRESENTATIVES: The Parties shall be fully authorized to enter into a binding agreement on the terms set forth in this Agreement at the date that this Agreement is executed by the Parties, respectively,

(a) The City shall have obtained official approval of this Agreement by the City Council authorizing execution of this Agreement and its representatives executing the documents shall be authorized to do so.

11. GOVERNING LAW: This Agreement, and all disputes related to or in connection with this Agreement, shall be governed by, and construed in accordance with, the laws of the state of Arizona, and, where applicable, the laws of the United States of America, without the application of any law of conflicts of laws that would require or permit the application of the laws of any other jurisdiction. The Parties hereto each hereby submit to the exclusive jurisdiction of the federal and state courts for the state of Arizona and agree that venue shall be in such courts in Maricopa County, Arizona.

12. HEADINGS: The headings for the various provisions of this Agreement are intended to provide for general reference only, are not a part of the substantive provisions of this Agreement to which they relate, and shall not limit or modify any of the terms and provisions of this Agreement.

13. MODIFICATION OF AGREEMENT: No representations, warranties, inducements, or oral agreements have been made by any of the Parties except as expressly set forth herein or in other contemporaneous written agreements, which shall not be revoked or superseded by this Agreement. This Agreement may not be

changed, modified or rescinded, except in a writing, signed by all Parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

14. NOTICES: All notices, requests, demands and consents to be made hereunder to the Parties hereto shall be in writing and shall be delivered by hand or sent by registered mail or certified mail, postage prepaid, return receipt requested, through the United States Postal Service to the following addresses:

To QUANTUM: QUANTUM REALTY PARTNERS, LLC  
7373 E. Doubletree Ranch Road, Suite 200-17  
Scottsdale, Arizona 85258  
Attn: Ernest J. Babich, Manager

To the City: City of Chandler  
Neighborhood Services Division  
P.O. Box 4008, Mail Stop 600  
Chandler, Arizona 85244-4008  
Attn: Neighborhood Resources Director

To LENDER:

15. COUNTERPART EXECUTION: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

DATED as of the date first above written.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

QUANTUM REALTY PARTNERS, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

CITY OF CHANDLER, an Arizona  
municipal corporation

ATTEST:

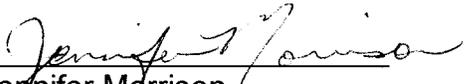
\_\_\_\_\_  
Marla Paddock, City Clerk

\_\_\_\_\_  
Jay Tibshraeny, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
**Mary Wade, City Attorney**  
By: Eric Anderson   
Assistant City Attorney

REVIEWED BY:

  
\_\_\_\_\_  
Jennifer Morrison  
Neighborhood Resources Director