



**MEMORANDUM** NEIGHBORHOOD RESOURCES- COUNCIL MEMO NR14-002

**DATE:** JANUARY 30, 2014

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

**THRU:** RICH DLUGAS, CITY MANAGER *RD*  
JEFF CLARK, FIRE CHIEF *JC*

**FROM:** JENNIFER MORRISON, NEIGHBORHOOD RESOURCES DIRECTOR *JM*

**SUBJECT:** AUTHORIZATION TO RELEASE A DEED OF TRUST ON PROPERTY AT 298-382 N. MCQUEEN RD., CHANDLER, ARIZONA, IN CONSIDERATION FOR THE RECEIPT OF THE SUM OF \$20,000

**RECOMMENDATION:** Staff recommends that Council authorize the Neighborhood Resources Director to release the second deed of trust held by the City on property at 298-382 N. McQueen Rd. in consideration for the receipt of the sum of \$20,000.

**BACKGROUND/DISCUSSION:** The background and circumstances of this matter can be found in the attached memorandum from the Legal Department. Normally, the release of a deed of trust is a routine matter handled through the Neighborhood Resources Director when a housing rehabilitation loan is repaid or otherwise satisfied.

However, this matter involved the release of a deed of trust that secured a note given by Human Action for Chandler (HAC), now Community Services of Arizona (CSA), in consideration for an award of \$500,482 in federal HOME Investment Partnership Program (HOME) funds in 1998 for the development of affordable housing. No portion of the note has been repaid, but the period of the note has passed the federally required 10-year affordability period, even though it has not yet met the additional 10 years comprising the full term of the 20-year note.

In 2004, the City's lien was subordinated to a bank loan and deed of trust, which is now in the first lien position and which, until recently, has been subject to foreclosure proceedings that would completely eliminate the City's interest in the subject property securing the City note. The bank lien was assigned to an investment group that only recently cancelled the pending trustee's sale to foreclose on the property. Meanwhile, a closely associated entity, AZ APT 3113, LLC, has acquired title to the property from CSA and assumed CSA's repayment obligation under the

bank note. AZ APT 3113, LLC has offered to pay the City \$20,000 in consideration for the City's recording a release of its lien interest in the property.

The release of the City's lien will allow AZ APT 3113, LLC to obtain new financing or to find a new buyer for the property. The new owner's offer benefits the City because it allows the City to recoup a portion of its original loan for future community development use. Otherwise, the City's lien will either be eliminated through foreclosure of the first lien or will automatically expire in a few years. It is recommended that the City accept the offer and, upon receipt of the funds, release its interest in the property.

**FINANCIAL IMPLICATIONS:** The City will receive \$20,000 that would otherwise not be realized. Funding will be deposited into a General Fund Community Development account (101-4700).

**PROPOSED MOTION:** Move to authorize the Neighborhood Resources Director to release the deed of trust held by the City on property at 298-382 N. McQueen Rd. in consideration for the sum of \$20,000.

MEMO TO: Jennifer Morrison, Neighborhood Services Director

FROM: Glenn A. Brockman, Assistant City Attorney *GA B*

SUBJECT: Property at 298-382 North McQueen Rd., Chandler Arizona  
Settlement: Release of Deed of Trust in exchange for \$20,000

DATE: January 30, 2014

In 1998, the City of Chandler, through its HOME Investment Partnership Program (HOME), issued a no-interest loan of federal funds in the amount of \$500,482 to Human Action for Chandler (HAC) [later, renamed Community Services of Arizona (CSA)] to purchase several abutting properties along the west side of McQueen Road, north of Chandler Blvd. (the "Property"), for use as affordable rental housing. HAC gave the City a promissory note in the amount of the loan secured by a deed of trust recorded against the Property. This was a no-interest loan that was wholly forgivable if the property was operated as affordable rental housing for the full affordability period or term of the note. Federal regulations required a minimum 10 year affordability period, but the City's note listed the term of the note as 20 years (240 months). In March, 2004, the City subordinated its deed of trust to one held by Arizona Bank & Trust (the "Bank"), from whom CSA obtained a \$513,000 business loan.

During the last few years, CSA's operations here and elsewhere in the State of Arizona have faltered. The Bank began proceedings to foreclose its deed of trust on the Property, but did not complete the trustee's sale which would have eliminated the City's lien on the Property. Instead, the Bank assigned its business loan note and deed of trust to APT 4891, LLC, who now is the first position lender, and who, until recently, had continued the pending trustee's sale. At the same time, a related, but separate investment group, AZ APT 3113, LLC, has contracted with CSA to take title to the Property and to assume CSA's obligation under the Bank note. Since October, 2013, AZ APT 3113, LLC, has owned the Property, subject to both the Bank's first lien and City's second position lien.

The attorney for AZ APT 3113, LLC has advised that his client is willing to pay the City \$20,000 for a release of the City's second lien in interest in the Property. This would compromise and settle any interest the City has in the Property and would be deemed a satisfaction of the note that the City's lien secures. The benefit of the release to AZ APT 3113, LLC is that it allows it to obtain future financing or to arrange for the sale of the Property to persons willing to develop and use the Property. The benefit to the City is that it will recoup some portion of the funds owed to the City under its note that it will not otherwise realize, either because of foreclosure or because of the expiration of the term of the note.

  
Glenn A. Brockman, Asst. City Attorney