



Chandler • Arizona
Where Values Make The Difference

#17
AUG 09 2007

MEMORANDUM

Planning and Development - Council Memo No. RS07-0010

DATE: July 20, 2007

TO: MAYOR AND COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
DOUG BALLARD, PLANNING AND DEVELOPMENT DIRECTOR
JEFF KURTZ, ASSISTANT PLANNING & DEVELOPMENT DIRECTOR
PAT TYRRELL, COMMUNITY DEVELOPMENT COORDINATOR

FROM: TRESA MCDONALD, HOUSING REHABILITATION COORDINATOR

SUBJECT: REQUEST FOR THE AUTHORIZATION TO SUBORDINATE THE HOUSING REHABILITATION LIEN ON PROJECT # RH02-0006 LOCATED AT 746 E. TYSON ST. IN THE AMOUNT OF \$24,140.00

RECOMMENDATION: Staff recommends that the City Council authorize the subordination of the Housing Rehabilitation lien on the property located at 746 E. Tyson Street.

BACKGROUND AND DISCUSSION: The single family, owner-occupied home located at 746 East Tyson Street was rehabilitated under the City of Chandler's Housing Rehabilitation Program in 2003. The City has placed a lien against the property for \$24,140.00. This lien is in the form of a 10-year repayable loan, whereby the owner repays 25% of the total and the balance is forgiven at the end of the term of the loan. The owner's balance (25% to be paid back) was \$5,893.92 and has been paid to the City of Chandler. The remaining balance is \$18,105.00 and will be forgiven in 2013 per the original loan agreement.

The owner is now requesting a refinance in order to lower her interest rate and is not receiving any cash out. The new loan is for \$168,750.00. In order to obtain the loan, a subordination of the City's lien is required by the lending institution.

FINANCIAL IMPLICATIONS: The City's lien is currently in second position and would remain in second position after the new loan. The City's lien will not be released until the term of affordability expires in 2013. The property is currently valued at approximately \$205,000, which is more than the combined encumbrances of the City's lien and the new first mortgage.

PROPOSED MOTION: Move to approve the authorization to subordinate the Housing Rehabilitation lien on Project # RH02-0006, located at 746 East Tyson Street.

RECORDING REQUESTED BY:

TICOR Title Company
Escrow No. 1128988-LW
Title Order No. 00411129

When Recorded Mail Document To:

City of Chandler
Community Development
Attn: Tresa McDonald
P.O. Box 4008
Chandler, AZ 85244-4008

APN: 302-69-116

SUBORDINATION AGREEMENT

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 July 20, 2007, by Frances Jackson

owner of the land hereinafter described and hereinafter referred to as "Owner," and City of Chandler (Housing Rehabilitation Program)

present owner and holder of the deed of trust and note first hereinafter described and hereinafter referred to as "Beneficiary";

WITNESSETH

THAT WHEREAS, Frances Jackson, did execute a deed of trust, dated February 3, 2003, to Glen Brockman, Chandler City Attorney, as trustee, covering

SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF

to secure a note in the sum of \$24,140.00, dated February 3, 2003, in favor of City of Chandler, (Housing Rehabilitation Program, which deed of trust was recorded as instrument no. 2003-194702, on February 19, 2003, Official Records of said county; and

WHEREAS, Owner has executed, or is about to execute, a deed of trust and note in the sum of \$168,750.00 dated , in favor of Bear Stearns Residential Mortgage Corporation, hereinafter referred to as "Lender," payable with interest and upon the terms and conditions described as a Reduction in rate from current 11.65% down to 10.29%, No cash in hand, and with a P & I payment not to exceed \$1,517.19, 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 or 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 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, those provisions, if any, contained in the deed of trust first above mentioned, which provide for the subordination of the lien or charge thereof to another deed or deeds of trust or to another mortgage or mortgages.

Beneficiary declares, agrees and acknowledges that

- (a) (S)He consents to and approves (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 in 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;
- (c) (s)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 in 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 and 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.

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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.

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

(City of Chandler)

Frances Jackson

Beneficiary

Owner

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

State of Arizona
County of _____

On _____ before me, _____,
(here insert name and title of the officer)

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.

Signature _____ (Seal)

State of Arizona
County of _____

On _____ before me, _____,
(here insert name and title of the officer)

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.

Signature _____ (Seal)

EXHIBIT "B"

LOT 67, OF WILSHIRE PARK UNIT TWO, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA RECORDED IN BOOK 130 OF MAPS, PAGE 27.



ERIE ST

NITHICA ST

E TYSON ST

E CARLA VISTA DR

E OAKLAND ST

NJACKSON ST