

#16  
AUG 23 2007



**Chandler • Arizona**  
*Where Values Make The Difference*

**MEMORANDUM                      Planning and Development - Council Memo No. RS07-0011**

**DATE:**            August 3, 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 # RH06-0002 LOCATED  
                         AT 315 W. Tulsa St. IN THE AMOUNT OF \$72,758.24

RECOMMENDATION: Staff recommends that the City Council authorize the subordination of the Housing Rehabilitation lien on the property located at 315 W. Tulsa St.

BACKGROUND AND DISCUSSION: The single family, owner-occupied home located at 315 W. Tulsa St. was rehabilitated under the City of Chandler's Housing Rehabilitation Program in 2006. The City has placed a lien against the property for \$72,758.24. This lien is in the form of a 15-year forgivable loan, whereby the total is forgiven at the end of the term of the loan.

The owner is now requesting a refinance in order to lower her interest rate, combine the 1<sup>st</sup> and 2<sup>nd</sup> mortgages and is not receiving any cash out. The new loan is for \$113,000.00. 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 third position and would move to second position after the new loan. The City's lien will not be released until the term of affordability expires in 2021. The property is currently valued at approximately \$175,000

PROPOSED MOTION: Move to approve the authorization to subordinate the Housing Rehabilitation lien on Project # RH06-0002, located at 315 W. Tulsa St.

Recording Requested By:  
**OLD REPUBLIC TITLE AGENCY**

Order No.: 4723003884-CM  
APN: 302-58-054  
WHEN RECORDED MAIL TO

\_\_\_\_\_  
SPACE ABOVE THIS LINE FOR RECORDER'S USE

### **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 this 2<sup>nd</sup> day of August, 2007, by Araceli Rosales, an unmarried woman 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, Araceli Rosales, an unmarried woman did execute a deed of trust, dated September 15, 2006, to Glenn A. Brockman, Assistant Chandler City Attorney, as Trustee, covering;

See "Exhibit A" attached hereto and made a part hereof

To secure a note in the sum of \$72,758.00, dated September 15, 2006, in favor of City of Chandler (Housing Rehabilitation Program), which deed of trust was recorded on October 5, 2006, as Instrument No. 06-1320185, 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 \$113,000.00, dated \_\_\_\_\_, in favor of Wells Fargo Bank, N.A., 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 hereinabove 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 of 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

**SUBORDINATION, RECORDED DEED OF TRUST TO DEED OF TRUST TO RECORD.**

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 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 agreements as to such subordination, including, but not limited to, 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) He/she 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) He/she 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.

**SUBORDINATION, RECORDED DEED OF TRUST TO DEED OF TRUST TO RECORD.**

Signature of Beneficiary(s)

Signature of Owner(s)

City of Chandler

\_\_\_\_\_  
Araceli Rosales

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

Name:

Title:

State of Maricopa  
County of Arizona

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2007 by \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

State of Maricopa  
County of Arizona

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2007 by \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS SUBORDINATION  
AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT THERETO.  
(CLTA SUBORDINATION FORM "A")**

**EXHIBIT A**

Lot 141, HOY HOMES ANNEX, according to Book 47 of Maps, page 6, records of Maricopa County, Arizona.