



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

#28

APR 24 2008

**NEIGHBORHOOD RESOURCES- COUNCIL MEMO NO. NR08-007**

**DATE:** April 14, 2008

**TO:** MAYOR AND CITY COUNCIL

**THRU:** W. MARK PENTZ, CITY MANAGER  
RICH DLUGAS, ASSISTANT CITY MANAGER RD  
JUDY REGISTER, NEIGHBORHOOD RESOURCES DIRECTOR JLR

**FROM:** PAT TYRRELL, COMMUNITY DEVELOPMENT COORDINATOR PT

**SUBJECT:** APPROVAL OF HOUSING DEVELOPMENT PROJECT LOAN  
AGREEMENT WITH HABITAT FOR HUMANITY

**RECOMMENDATION:**

Staff recommends approval of a Housing Development Project Loan Agreement with Habitat for Humanity in the amount of \$235,000. Staff recommends changes to the program including an increase in the total amount loaned to \$75,000 per lot and the flexibility to use loan funds to both acquire property, use for construction and reconstruction of housing owned by low income Chandler families.

**BACKGROUND / DISCUSSION:**

During the budget process the Council approved funds to assist Habitat for Humanity (HfH) to acquire property in a specific portion of the Redevelopment Area. Habitat for Humanity's goal is to construct five single-family homes in the area that will be affordable for low-income families. Besides assistance from the City, HfH utilizes other donations, 0% interest mortgages, volunteer labor and the sweat equity of the partner families to achieve the goal.

Unfortunately, acquisition of property by HfH has been slowed due to rising costs involved in land acquisition and diminished financial resources they have had access to in the past. As an example, recently, prices for some lots have come with prices of up to \$80,000. Under the current program, the city will reimburse only \$30,000 for a vacant lot and \$72,500 for a lot requiring the demolition of a structure. Increasing the amount available and making it more flexible (supplement construction costs) will allow HfH to more successfully negotiate with property owners. Additionally staff recommends that these funds be made more flexible to allow for reimbursement of construction costs for new homes and costs associated with the reconstruction of homes owned by low-income Chandler families.

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**FINANCIAL IMPLICATIONS:**

Funds have been allocated and are available in Cost Center 1500.

**PROPOSED MOTION:**

Move to approve a Housing Development Project Loan Agreement with Habitat for Humanity in the amount of \$235,000.

Attach.

**HOUSING DEVELOPMENT PROJECT**  
**LOAN AGREEMENT**

THIS HOUSING DEVELOPMENT PROJECT LOAN AGREEMENT (the "Agreement"), which shall be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2008, is made and entered into by and between the CITY OF CHANDLER, an Arizona municipal corporation ("Chandler"), and HABITAT FOR HUMANITY, VALLEY OF THE SUN, an Arizona nonprofit corporation ("Developer").

**RECITALS**

A. Chandler's General Plan encourages public-private ventures for the development of low and moderate income housing on underutilized parcels, including those that bring new housing to the downtown area.

B. Pursuant to Title 9, Chapter 4, Article 4 of the Arizona Revised Statutes (the "Act"), Chandler may spend public monies and otherwise assist in providing for the acquisition, construction and rehabilitation of housing and related facilities located in areas that are declared to be housing development areas in Chandler, Arizona.

C. Pursuant to the adoption of Resolution No. 4003, Chandler has declared the area bounded by Palm Lane, Delaware Street, Elgin Street and Pecos Road as a housing development area in Chandler, Arizona (the "Housing Development Area").

D. Developer desires to undertake a project within the Housing Development Area to acquire parcels of real property thereon up to five (5) single-family homes that will be affordable to purchase by low-income families per Developer's guidelines (the "Project") and Chandler desires to provide financial assistance to encourage and promote the Project.

E. Developer desires to assist existing housing deemed substandard by the City of Chandler and owned or rented by low-income families

F. The Project constitutes a "housing development project," as that term is used in the Act, for which Chandler may provide financing. Chandler and Developer intend that the Project will reduce the stigma of affordable housing by creating unique architectural designs for the homes to be constructed as part of the Project that will add a sense of interest and permanence to the Housing Development Area.

**TERMS OF AGREEMENT**

NOW, THEREFORE, in consideration of the above-stated Recitals, and the mutual promises contained herein, the parties hereto agree as follows:

1. Agreement for Loans. Chandler agrees to make loans to the benefit of Developer in a total aggregate sum not to exceed **\$235,000**, and Developer agrees to accept such loans from Chandler, for the purpose of acquiring parcels of real property for the Project, subject to all of

the terms, covenants and conditions stated in this Agreement. The amount of any individual loan made and accepted hereunder shall be as follows:

(a) For a parcel of real property, the principal sum of the loan shall not exceed \$75,000. The proceeds of the loan may be used for real property acquisition and costs associated with the construction or reconstruction of housing.

2. Security and Terms of a Loan. Each loan made by Chandler under this Agreement shall be evidenced by a promissory note substantially in the form shown in attached Exhibit "A" (the "note") secured by a deed of trust substantially in the form shown in attached Exhibit "B" (the "deed of trust"), which shall be recorded against the parcel of real property for which the loan is made (the "subject property"). The note shall be non-interest bearing and shall be for a period of three (3) years commencing on the stated date of the note. At the end of the period, or in the event of any earlier default in the terms of the note or the deed of trust, the unpaid balance of the note shall become immediately due and payable in accordance with the terms of the note; *provided, however*, that if Developer has by that date constructed upon the subject property a single-family residence, whose design has been approved by Chandler through its Director of Planning & Development, and Developer is marketing the subject property as improved, or the subject property as improved has been sold pending close of escrow, to a low-income family, then Chandler shall deem the Developer's repayment obligation under the note to be forgiven, and the Chandler City Manager or his/her designee shall execute and provide to Developer for recordation a document appropriate to release the lien created by the recording of the deed of trust.

3. Disbursement of Loan Proceeds. For each loan made under this Agreement, if Developer has satisfied the conditions precedent set forth in Paragraph 4 of this Agreement and is otherwise in full compliance with the terms and conditions of this Agreement, then, upon written request of the Developer, Chandler shall disburse loan funds for the purchase of the subject property. Any such disbursement shall be made payable and delivered to the escrow agent escrowing Developer's purchase of the subject property on or before the date escrow is scheduled to close, along with written instructions to apply the funds so disbursed toward the purchase price of the subject property.

4. Conditions Precedent to Making a Loan. For each loan made under this Agreement, Chandler shall not be obligated to make any loan or disburse loan funds for Developer's purchase of the subject property unless and until the following conditions precedent shall first have been satisfied:

(a) There shall have been furnished to Chandler a commitment for title insurance for a current form ALTA lenders policy (title commitment) issued by a title insurance company acceptable to Chandler (the "title company") in form satisfactory to Chandler establishing that the title company is prepared to issue its lenders policy in the amount of the loan to insure that Chandler shall be the holder of a first or senior lien upon the subject property, free of encumbrances and other exceptions to title other than those approved in advance by Chandler, and not subordinated to any interests.

(b) Closing of the escrow for the purchase of the subject property is pending and Developer has executed, completed and deposited the note and the deed of trust for the loan from Chandler with escrow agent.

(c) Developer has acquired, or will acquire at close of escrow, good and marketable fee simple title to the subject property, free and clear of all liens, charges, claims, options, encumbrances and other matters, except as may be specifically approved in writing by Chandler in its sole discretion.

(d) Developer shall provide Chandler with satisfactory evidence that all taxes and assessments liened against or affecting the subject property have been paid current or will be paid current as of the date the loan closes.

(e) Developer shall provide Chandler with a proper borrowing resolution or consent, which expressly authorize Developer to obtain the loan, provide security therefore and execute this Agreement, the note and the deed of trust.

5. Compliance with all applicable local law. Developer shall comply with all codes, ordinance, regulations and other laws applicable to residential construction in the City of Chandler, and nothing herein shall be construed to constitute a waiver thereof.

6. Closing costs and title insurance. Developer shall pay all costs, expenses, fees, and charges of any type applicable to the closing of the loan, which shall include, but not be limited to, recording costs and the cost of the lender's title insurance policy.

7. Developer's Representations. Developer makes the following representations, which are duly relied upon by Chandler in making each loan under this Agreement:

(a) Developer has reviewed the Act and believes that it is eligible under the Act to receive the loans described herein that are made pursuant to the Act.

(b) Developer is a duly formed nonprofit corporation under the laws of the State of Arizona, is qualified to transact business in the State of Arizona and has all requisite power and authority to own its properties and to engage in the business it conducts. Habitat for Humanity, Valley of the Sun is the exact legal name of Developer. Developer does not transact business under any name other than Habitat for Humanity, Valley of the Sun.

(c) Developer is not in default with respect to any of its debts or obligations.

(d) Developer has full power and authority to enter into, incur and perform the obligations under this Agreement, the note and the deed of trust, and has taken all action necessary to authorize the execution, delivery and performance of this Agreement, the note and the deed of trust.

(e) The person signing this Agreement and who will sign the note and the deed of trust for and on behalf of Developer is and will be authorized to do so on behalf of Developer.

(f) Except as disclosed by Developer to Chandler in writing, there are no actions, suits or proceedings pending, or to the best of Developer's knowledge, threatened in any court or before any governmental authority against or affecting Developer or any of the subject property, which would materially impair any of the subject property or Developer's ability to perform the covenants or obligations required to be performed under any note or deed of trust provided to Chandler from Developer in obtaining a loan under this Agreement, or involving the validity, enforceability, or priority of any such note or deed or trust.

(g) To the best of Developer's knowledge, Developer has complied with all applicable laws with respect to any restrictions, specifications or other requirements pertaining to the conduct of its business. Developer is not in default with respect to any governmental regulations.

(h) The purchase of any of the subject property for which funds are loaned under this Agreement and other undertakings pursuant to this Agreement are and will be for the purpose of acquiring the subject property in order to undertake and pursue the Project, and not for any other reason.

8. Independent Contractor. Developer is an independent contractor in the performance of all activities, functions, duties and obligations pursuant to this Agreement. Developer and Chandler are not and shall not be considered as joint venturers, partners or agents of each other. Developer's employees, agents, and subcontractors shall not be considered as officers, employees, agents or subcontractors of Chandler. Chandler and Developer hereby agree not to represent to anyone that they are agents of one another or have authority to act on behalf of one another.

9. No Assignment or Transfer. This Agreement and any proceeds, or any right to proceeds, from the loans contemplated to be made by Chandler under this Agreement are not assignable or otherwise transferable by Developer without the prior written approval of Chandler. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement without the prior written consent of Chandler.

10. Organizational Documents. Developer shall provide Chandler with certified copies of all organizational document of Developer, including its articles of incorporation and bylaws, and a certificate of good standing from the Arizona Corporation Commission, each certified by the Arizona Corporation Commission as of a recent date acceptable to Chandler.

11. Remedies.

(a) In the event of default of this Agreement by Developer or by Chandler at a time when the making of a loan under this Agreement is pending, the non-defaulting party may, as the party's sole remedy, cancel this Agreement fifteen (15) days after giving written notice to

the defaulting party and to Escrow Agent of the default, if within such period the default has not been cured.

(b) Nothing herein or elsewhere in this Agreement shall be construed to invalidate a loan that has already been made and closed, or shall be construed to prevent or limit remedies available to either party under the note and the deed of trust provided as part of the closing on a loan already made under this Agreement.

12. Notices. All notices and other communications given hereunder shall be in writing and shall be effective upon personal delivery or two (2) business days after being deposited in the U.S. Mail, registered or certified, return receipt requested, postage prepaid. All such notices and other communications shall be addressed as follows or to such other address or addresses as the parties or Escrow Agent may from time to time specify in writing delivered as provided in this paragraph:

If to Developer: Debra L. Fabry Bradley, CPA  
Habitat for Humanity Valley of the Sun  
P.O. Box 20186  
Phoenix, Arizona 85036

If to Chandler: Judy Register  
Neighborhood Resources Director  
55 North Arizona Place, Suite 310  
Chandler, Arizona 85225

13. Modification and Waiver. Except as expressly provided herein to the contrary, no supplement, modification or amendment of any term of this Agreement shall be deemed binding or effective unless in writing and signed by the parties hereto. No waiver of any of the provisions of this Agreement shall constitute or be deemed a waiver of any other provision, nor shall any waiver be a continuing waiver. Except as otherwise expressly provided herein, no waiver shall be binding unless executed in writing by the party making the waiver.

14. Exhibits. The Exhibits referred to herein and attached hereto (the "Exhibits") are incorporated herein by reference.

15. Litigation Expenses and Attorneys' Fees. In the event of litigation involving this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its costs and expenses incurred in such action from the other party, including without limitation the cost of reasonable attorneys' fees as determined by the judge of the court.

16. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this Agreement shall be deemed invalid or prohibited there under, such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect.

17. Entire Agreement. This Agreement, including the Exhibits attached hereto, constitutes the entire agreement among the parties. All terms and conditions contained in any other writings previously executed by the parties and all prior and contemporaneous arrangements and understandings between the parties are superseded hereby. No agreements, statements or promises about the subject matter hereof shall be binding or valid unless they are contained herein.

18. Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Arizona.

19. Conflict of Interest/Cancellation. Notwithstanding any other provision of this Agreement, no member, official or employee of Chandler shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law. Furthermore, the parties hereto acknowledge that this Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

**IN WITNESS WHEREOF**, the undersigned parties have executed this Agreement the day and year first above written.

ATTEST: CITY OF CHANDLER, an Arizona municipal corporation

\_\_\_\_\_  
City Clerk

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney *S. A. B.*

**STATE OF ARIZONA**

**County of Maricopa**

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by Boyd W. Dunn, the Mayor of the City of Chandler, an Arizona municipal corporation, for the municipal corporation, being authorized so to do.

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

My Commission Expires:

HABITAT FOR HUMANITY, VALLEY OF THE SUN, an Arizona non-profit corporation

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

**STATE OF ARIZONA**

**County of Maricopa**

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, the \_\_\_\_\_ of Habitat for Humanity, Valley of the Sun, an Arizona non-profit corporation, for the corporation, being authorized so to do.

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

My Commission Expires: