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MEMORANDUM NEIGHBORHOOD RESOURCES – NR08-0017

DATE: May 28, 2008

TO: MAYOR AND COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
JUDITH REGISTER, NEIGHBORHOOD RESOURCES
DIRECTOR

FROM: PAM LARGE, ASSISTANT COMMUNITY DEV. COORDINATOR

SUBJECT: MEMORANDUM OF UNDERSTANDING – HOUSING OUR
COMMUNITIES, DOWNPAYMENT ASSISTANCE PROGRAM

RECOMMENDATION: Mayor and City Council are requested to approve a Memorandum of Understanding (MOU) with Housing Our Communities (a local nonprofit agency) for the provision of Downpayment Assistance and Housing Counseling to moderate income, first time homebuyers.

BACKGROUND AND DISCUSSION: The City of Chandler has been awarded funding from the federal Ameridream Downpayment Assistance (ADDI) Program. ADDI funds are received through the Maricopa HOME Consortium from the US Department of Housing and Urban Development.

Housing Our Communities (HOC) is an East Valley Based non-profit agency with over fifteen years in housing counseling and homebuyer assistance. Because of their experience and established relationships with lenders, HOC has a waiting list of qualified, moderate-income Chandler residents. HOC proposes to use the ADDI funds to provide up to \$10,000.00 in assistance per family. HOC will provide required homebuyer counseling and handle all necessary administrative tasks. Any funds provided for a homeowner will be secured as a second lien and in the city's name.

The city executed a MOU that covered funding through FY 05/06. This MOU will encumber FY's 06/07, 07/08 and 08/09 ADDI funding. Staff recommends a total of \$27,081.00 be allocated to HOC.

FINANCIAL IMPLICATIONS: All costs associated with the federal Ameridream Downpayment Assistance Program will be paid by the federal government and do not require repayment on the part of the City of Chandler.

PROPOSED MOTION: Move to approve a Memorandum of Understanding with Housing Our Communities for the use of federal Ameridream Downpayment Assistance Program Funds.

CITY OF CHANDLER- HOME PROGRAM MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (MOU), made and entered into this ___ day of _____ 2008, by and between **The City of Chandler**, an Arizona municipal corporation hereinafter referred to as the **CITY** and **Housing Our Communities, Inc. (HOC)** an Arizona non-profit 501(c)3 organization hereinafter referred to as **HOC**, both parties established under the laws of the State of Arizona.

WHEREAS, pursuant to the National Affordable Housing Act, the CITY, through the Maricopa HOME Consortium (Consortium), will receive HOME Investment Partnerships Program (HOME) funds which includes American Dream Downpayment Initiative funds (ADDI) for certain eligible activities; and

WHEREAS, it is necessary that the CITY and HOC enter into a Memorandum of Understanding (MOU) for the implementation of certain eligible ADDI activities;

NOW, THEREFORE, the parties do hereby agree as follows:

MOU TERM: This MOU shall take effect as of the date of execution by the CITY and shall be in effect for a term of two years. If ADDI funds are no longer made available from the United States Department of Housing and Urban Development (HUD) this MOU will terminate.

AMOUNT OF FUNDS

The City of Chandler has been allocated the following amount of funds for the American Dream Down Payment Initiative program:

FY 2006 \$11,253.00
FY 2007 \$11,286.00
FY 2008 \$4,542.00

TOTAL: \$27,081.00

City of Chandler ADDI PROGRAM: The ADDI Program will be administered in accordance with HUD's ADDI regulations with emphasis on the following program requirements:

- A. The applicant must be a first-time homebuyer as defined by HUD. Interim Rule for ADDI defines "first-time homebuyer" as an individual and his or her spouse who have not owned a home during the three-year period prior to purchase of a home with ADDI assistance.
- B. The ADDI funding will be made available via a loan, secured by a deed of trust and promissory note, and recapture provisions provided by HOC. This note is non-forgivable and is due in full upon sale or transfer. Funds provided through the ADDI program will not exceed six percent of the purchase price up to a maximum of \$10,000.

- C. The applicant must attend and complete a face-to-face first-time homebuyer education course that is FHA/HUD approved and provided by a non-profit. Applicants can attend the FHA/HUD approved class offered by HOC. HOC will accept a Certificate of Completion from other approved organizations providing the face-to-face first-time homebuyer education course.
- D. The applicant's household projected income cannot exceed 80 percent of median income for the area as defined by HUD. HOC will verify applicant income and document it in accordance with HUD requirements.
- E. The request for funds will be submitted to the CITY by HOC on behalf of the qualified applicant who has furnished HOC with a mortgage commitment, and HUD estimate of settlement fees. HOC may also request ADDI funds from the City for eligible project costs as defined in §92.602(b), with the maximum amount of assistance for any family not to exceed §92.602(e). Funds will then be dispersed by HOC to the appropriate title agency. The ADDI funding will be granted on a first-come, first-serve basis.
- F. ADDI funding for approved applicants will be forwarded by the CITY to HOC. HOC will then disperse funding to the appropriate title agency. Once approved for funding, the request to forward funds to the title company must be made by the applicant to HOC at least 30 days prior to the closing date.
- G. The maximum appraised value of the home to be purchased will not exceed the maximum property value established by HUD for the HOME program found at §92.254.

MOU ADMINISTRATION: In accordance with federal regulations, including 24 CFR 92, the CITY is responsible for ensuring the administration of the HOME Program and the ADDI funds in accordance with all program requirements.

- A. Internal Controls - HOC shall utilize adequate internal controls and maintain necessary source documentation for all activity costs incurred.
- B. Affordability Period - HOC shall ensure the protection of the ADDI investment under the requirements set forth in 24 CFR §92.503. Any ADDI invested in housing that does not meet the affordability requirements for the period specified in §92.252 or §92.254, as applicable, must be repaid in accordance with 24 CFR §92.503 (b)(3).
- C. Required Records - HOC shall maintain all records required by the Federal regulations specified in 24 CFR §92.508 that are pertinent to the ADDI activities to be funded under this MOU. Such records shall include but not be limited to:
 - 1) a full description of each activity undertaken and its impact;
 - 2) documentation supporting the eligibility of activities;
 - 3) documentation supporting the acquisition of real property acquired with HOME assistance;
 - 4) documentation demonstrating continued compliance with HUD's affordability requirements;

- 5) documentation supporting compliance with the fair housing, nondiscrimination and equal opportunity components of the HOME program;
 - 6) documentation supporting compliance with HOME regulations;
 - 7) documentation demonstrating compliance with deeds of trust, promissory notes, and loans associated with CITY owner-occupied housing activities;
 - 8) client data demonstrating that the clients served meet the income and other criteria required by Federal law, and that no unlawful discrimination occurs in the solicitation or selection process of low income persons or groups.
- D. Records Retention - HOC shall retain all records pertinent to this MOU for a period of five (5) years after the close of an activity, except that records documenting affordability compliance shall be kept for five (5) years after the end of the period of affordability, and shall submit to the CITY upon request all such records and reports.
- E. Activity Reports – HOC shall submit reports required by the CITY including, but not limited to, activity setups, completion reports, reports of beneficiaries’ demographics, and other HUD-required reporting data. These reports shall be submitted to CITY quarterly no later than 15 days past the quarter ended and once yearly no later than July 15 of each year.
- F. Audits and Inspections – All HOC records with respect to any matters covered by this MOU shall be made available to the CITY, their designees or the Federal Government, at any time during normal business hours as often as the CITY deems necessary to audit, examine and make excerpts or transcripts of all relevant data. It is the intent of the CITY to examine all such records prior to forwarding ADDI funds to complete a purchase.
- G. Subcontractors – If HOC utilizes subcontractors to administer any portion of this activity, HOC shall enforce all program requirements under this MOU on its subcontractors.

GENERAL PROVISIONS:

- A. It is expressly understood by the parties hereto that this MOU has been negotiated and executed in anticipation of receipt of ADDI funds by the CITY from the Maricopa HOME Consortium and HUD pursuant to the HOME Program and that, therefore, the terms, conditions and sums payable under this MOU are subject to any changes or limitations which may be required by HUD and the HOME ADDI Program regulations. Notwithstanding any other provisions of this MOU, any payment by CITY under this MOU is contingent upon the actual receipt of ADDI funds from HUD and as a member of the Maricopa HOME Consortium receipt of funds by the CITY from Maricopa County who is Lead Agency for the Maricopa HOME Consortium funds.
- B. Both parties acknowledge that no member of the governing body, nor any employee of the CITY who exercises any functions or responsibilities in connection with the carrying out of the Activity to which this MOU pertains, has any personal interest direct or indirect in this MOU.
- C. The CITY may amend this MOU at any time provided that such amendments make specific reference to this MOU and are executed in writing, signed by a

duly authorized representative of both organizations and in compliance with the procedures in the federal regulations found at 24 CFR Part 92 and 24 CFR Part 84 for non-profit organizations. Such amendments shall not invalidate the MOU nor relieve or release HOC from its obligations under this MOU. Amendments shall be filed with this original MOU.

- D. The CITY may, at any time, by written order, make changes within the general scope of this MOU in any one or more of the following areas:
 - 1) Work Statement activities reflecting changes in Federal, State, County or local regulations, policies or requirements;
 - 2) Administrative requirements such as changes in reporting periods, frequency of reports, or report formats required by HUD or local regulations, policies or requirements.
- E. This MOU shall be governed by and construed in accordance with the laws of the State of Arizona and all applicable federal laws and regulations.
- F. The invalidity in whole or in part of any provision of this MOU shall not void or affect the validity of any other provision of this MOU.
- G. HOC shall not discriminate against any ADDI applicant, employee, or applicant for employment because of race, color, religion, sex, national origin, familial status, age or disability. HOC shall take affirmative action to insure that applicants for employment and employees are treated, during employment, without regard to their race, color, religion, sex, national origin, familial status, age or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training including apprenticeship.
- H. HOC shall administer all services in accordance with the Fair Housing Act.
- I. HOC shall provide reasonable accommodations to individuals with disabilities upon request.
- J. During the term of this MOU, HOC shall indemnify, hold, protect and save harmless the CITY and any and all of its officers, agents, and employees from and against any and all actions, audits, proceedings, claims and demands, loss, liens, costs, expense and liability of any kind and nature whatsoever, for injury to or death of persons, or damage to property, including property owned by CITY, brought, made, filed against, imposed upon or sustained by the CITY, its officers, agents, or employees in and arising from or attributable to or caused directly or indirectly by the negligence, wrongful acts, omissions or from operations conducted by HOC, its officers, agents or employees, or by any person or persons acting on behalf of HOC and with HOC's knowledge and consent, expressed or implied. Should HOC perform any work knowing it to be contrary to applicable laws, ordinances, rules, building codes and/or regulations, it shall assume full responsibility, therefore, and shall bear all cost incurred due to its negligence. Any dispute not disposed of by mutual agreement by the parties hereto shall be decided in accordance with the applicable Arizona laws, ordinances, and codes of the state and local governments.

- K. No person who is an employee, agent, consultant, officer or elected official, or appointed official who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME assisted activity, either for themselves or those whom they have family or business ties, during their tenure or for one year thereafter.
- L. HOC certifies that neither it nor its principals or subcontractors, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- M. In accordance with 24 CFR §85.43, the CITY may suspend or terminate this MOU if HOC violates any term or condition of this MOU or if HOC fails to maintain a good faith effort to carry out the purpose of this MOU.
- N. The CITY or HOC may terminate this MOU for convenience in accordance with 24 CFR §85.44. Both parties shall agree upon the termination conditions including the effective date of the termination. The party initiating the termination shall notify the other party in writing stating the reasons for such termination.
- O. This MOU is subject to cancellation pursuant to A.R.S. §38-511.
- P. This MOU constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior agreements, representations, statements and undertakings are hereby expressly cancelled.
- Q. HOC will file on behalf of the City of Chandler, the attached Deed of Trust, Declaration of Deed Restrictions, Promissory Note and Recapture Provisions enforcing HOME and ADDI regulatory requirements.

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

HOC, Inc.

City of Chandler

John Smith, President and CEO

Date

Date

City of Chandler

MAYOR

Date