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MEMORANDUM Planning and Development -Council Memo No. HD 08-17

DATE: NOVEMBER 03, 2008

TO: MAYOR AND COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
JEFF KURTZ, ACTING PLANNING AND DEVELOPMENT DIRECTOR

FROM: KURT KNUTSON, HOUSING AND REDEVELOPMENT MANAGER

SUBJECT: REQUEST FOR AUTHORIZATION TO SUBORDINATE THE
HOMEOWNERSHIP AND DOWNPAYMENT ASSISTANCE LIENS ON
PROPERTY LOCATED AT 620 W. KNOX ROAD, CHANDLER ARIZONA.

RECOMMENDATION

Housing and Redevelopment Staff recommend that City Council authorize the subordination of the Downpayment Assistance lien on the property located at 620 W. Knox Road, Chandler, Arizona.

BACKGROUND

The single family, owner occupied home located at 620 W. Knox Road was sold under the Working Family Homeownership Program in December 2003. Two liens were placed against the property in the amount totaling \$37,000.00. One lien is in the form as a nonamortized, deferred payment loan in the amount of \$34,000.00. Another lien is in the form of a 5-year forgivable loan in the amount of \$3,000.00.

DISCUSSION

The owners are in the process of refinancing the first mortgage on their home in order to payoff the deferred payment loan owed to the City of Chandler in the amount of \$34,000. The \$3,000 forgivable loan requested to be subordinated, will be forgiven in its entirety on December 23, 2008. In order to obtain the refinancing, a subordination of the City's \$3,000 lien is required by the lending institution.

FINANCIAL IMPLICATIONS

The City's liens are currently in second and third position. The City's \$34,000 lien in second place will be repaid to the City and remaining lien will move to a second position until forgiven in December. The property has an appraised value of approximately \$225,000.00, which secures the \$3,000 encumbrances of the City's remaining lien until forgiven in December.

PROPOSED MOTION

Move to approve the authorization to subordinate the \$3,000 Downpayment Assistance lien on the property located at 620 W. Knox Road Street, Chandler, Arizona.

Recording Requested by:

When Recorded mail to:

**SUBORDINATION AGREEMENT
(Concurrent Recording)**

Escrow No.

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LEIN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS AGREEMENT, made this ____ day of _____, 200____ by

Nancy O. Prieto, an unmarried woman

Owner of the land hereinafter described and hereinafter referred to as "Owner" and

City of Chandler

Present owner and holder of the Deed of Trust and Note first hereinafter described and hereinafter referred to as "Beneficiary";

WITNESSETH

THAT WHEREAS, owner has executed a Deed of Trust dated _____ to **Glenn A. Brockman**, as Trustee, covering:

Lot 7, Chandler Manor Unit III, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 623 of Maps, Page 13. (620 West Knox Road, Chandler, AZ 85225)

to secure a Note in the sum of three thousand dollars \$3,000 dated _____ and recorded _____ **Document No.** _____ in favor of Beneficiary, which Deed of Trust is to be recorded concurrently herewith;

and

WHEREAS, Owner has executed, or is about to execute, a Deed of Trust and Note in the sum not to exceed _____

dated _____, in favor of _____ 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 from lender 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 and provided that Beneficiary will specifically and unconditionally subordinate the lien or charge of the Deed of Trust first 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 and 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 agreement as to such subordination including, but not limited to, those provisions, if any, contained in the Deed of Trust first above mentioned, which provides for the subordination of the lien or charge thereof to another Deed of Deeds of Trust or to another mortgage or mortgages.

Beneficiary declares, agrees and acknowledges that

1. He consents to and approved (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:
2. Lender is 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; and
3. He intentionally and unconditionally waives, relinquishes, subjects 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 and understands that in reliance upon, and on 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, subordination; and
4. An endorsement has been placed upon the Note secured by the Deed of Trust first 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.

BENEFICIARY:

(ALL SIGNAUTRES MUST BE ACKNOWLEDGED)

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

STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

On _____ before me, the undersigned Notary Public, 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.

My Commission Expires:

Notary Public

STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

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