



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

#19

FEB 12 2009

**MEMORANDUM**  
**NEIGHBORHOOD RESOURCES DIVISION - Council Memo No. NR08-048**

**DATE:** December 24, 2008

**TO:** MAYOR AND COUNCIL

**THRU:** W. MARK PENTZ, CITY MANAGER  
RICH DLUGAS, ASSISTANT CITY MANAGER RD  
JUDITH REGISTER, NEIGHBORHOOD RESOURCES DIRECTOR JR  
STEFANIE GARCIA, COMMUNITY DEVELOPMENT ADMINISTRATOR SG

**FROM:** PAM LARGE, COMMUNITY DEVELOPMENT ASSISTANT PL

**SUBJECT:** REQUEST FOR THE AUTHORIZATION TO SUBORDINATE THE HOUSING REHABILITATION LIEN ON PROJECT #RH08-0016 LOCATED AT 5633 W. BUTLER DR. IN THE AMOUNT OF \$48,039.85

RECOMMENDATION: Staff recommends that City Council authorize the subordination of the Housing Rehabilitation lien on the property located at 5633 W. Butler Dr.

BACKGROUND AND DISCUSSION: The single family, owner-occupied home located at 5633 W. Butler Dr. was a recipient of the City of Chandler's Housing Rehabilitation Program in 2008. The City has placed a lien against the property for \$48,039.85. This lien is in the form of a 15-year forgivable loan, whereby the balance is forgiven at the end of the term of the loan. The balance of \$48,039.85, will be forgiven in 2023, per the original loan agreement.

The owner is now requesting a refinance in order to lower their interest rate and is paying off two liens. The owner is receiving cash out for escrow purposes totaling \$684.00. The new loan is for \$91,689.00. 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 will be in second position after the new loan. The City's lien will not be released until the term of affordability expires in 2023. The property is currently valued at approximately \$188,600.00, 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 property located at 5633 W. Butler Dr.

**RECORDING REQUESTED BY**  
First American Title Insurance Company  
Lenders Advantage

**AND WHEN RECORDED MAIL DOCUMENT  
AND TAX STATEMENT TO:**  
City of Chandler Community Development  
Mail Stop 600 P.O. Box 4008  
Chandler, AZ 85244-4008

Space Above This Line for Recorder's Use Only

A.P.N.: 301-88-122 4

File No.: 1920-3584070a (tg)

**SUBORDINATION AGREEMENT**  
**(EXISTING TO NEW)**

**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 Nineteenth day of December, 2008, by

Stanley L. Balken, an unmarried man

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, Owner has executed a Deed of Trust dated Not Shown to Glenn A. Brockman, Assistant  
Chandler City Attorney and a member of the Sate Bar of Arizona, as Trustee, covering:

Lot 113, of CRESTVIEW UNIT 3, according to the plat of record in the office of the County Recorder of Maricopa  
County, Arizona, recorded in Book 242 of Maps, Page 31.

to secure a Note in the sum of \$48,039.85, dated Not Shown, in favor of City of Chandler, which Deed of Trust  
was recorded October 6, 2008 in Book N/A, Page N/A, or Instrument No. 2008-0863636, of said County; and

WHEREAS, Owner has executed, or is about to execute, a Deed of Trust and Note in the sum of \$91689.00, dated \_\_\_\_\_, in favor of Desert Schools Federal Credit Union, 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 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 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 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 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;

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Subordination Agreement - continued

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- (c) 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 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.

**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 THE IMPROVEMENT OF THE LAND.**

**(ALL SIGNATURES MUST BE ACKNOWLEDGED)**

*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")*

OWNER:

\_\_\_\_\_  
 STANLEY BALKEN

STATE OF **AZ** )  
 )ss.  
 County of \_\_\_\_\_)

On \_\_\_\_\_, before me, the undersigned Notary Public, personally appeared **STANLEY BALKEN**, 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 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

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Subordination Agreement - continued

File No.: **1920-  
3584070a (tg)**  
Date: **December 19, 2008**

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Subordination Agreement - continued

File No.: 1920-3584070a (tg)

Date: December 19, 2008

BENEFICIARY:

City of Chandler (Housing Rehabilitation Program)

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

STATE OF AZ )  
 )ss.  
County of \_\_\_\_\_ )

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 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

APPROVED AS TO FORM

*John K. Fisher*  
\_\_\_\_\_  
CITY ATTORNEY

## SUBORDINATION AUTHORIZATION

File No. **1920-3584070a** (tg)

The undersigned does hereby authorize and instruct **First American Title Insurance Company Lenders Advantage** to record the attached Subordination Agreement prepared and dated **Nineteenth day of December, 2008** and in signing, hereby accepts and approves all terms and conditions as stated herein and as stated in the Subordination Agreement.

**City of Chandler (Housing Rehabilitation Program)** is subordinating to a Deed of Trust in favor of **Desert Schools Federal Credit Union**, which Deed of Trust shall have an approximate loan amount of \$ **91,689.00**, plus costs. **Desert Schools Federal Credit Union** shall have a first lien position and **City of Chandler (Housing Rehabilitation Program)** shall have a second lien position.

It is understood and agreed that the Subordination Agreement is being executed concurrently herewith and Escrow Agent is hereby authorized and instructed to insert the actual amount of the new Deed of Trust, forthwith upon determination of same.

The undersigned will indemnify and save harmless Escrow Agent against all costs, damages, attorney's fees, expenses and liabilities, which it may incur or sustain in connection with this Authorization or the Escrow or any court action arising therefrom and will pay same upon demand, including but not limited to any interpleader action.

DATED: December 19, 2008

**City of Chandler (Housing Rehabilitation Program)**

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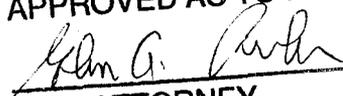
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**Authorized Signor**

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**Authorized Signor**

APPROVED AS TO FORM:

  
CITY ATTORNEY