

ATTACHMENT III

When recorded return to:

Arizona Department of Housing
Attn: Rental Program Administrator
1110 W. Washington Street, Suite 310
Phoenix, AZ 85007

CONSENT AND SUBORDINATION AGREEMENT

THIS CONSENT AND SUBORDINATION AGREEMENT ("Agreement") is made and entered into as of this ___ day of _____, 200__, by and between the **ARIZONA DEPARTMENT OF HOUSING**, an agency and instrumentality of the State of Arizona (the "Department") together with any successors and/or assignees to its rights, duties and obligations; _____, a(n) _____ ("Lender"); and is agreed to by _____, a(n) _____ ("Owner").

RECITALS:

WHEREAS, the Department has been designated by the Governor of the State of Arizona pursuant to Arizona Revised Statute Section 41-1501 *et. seq.*, and by the Arizona Revised Statutes Section 35-728(B) as the designated housing credit agency for the State of Arizona for allocation of federal low-income housing tax credits in conjunction with Sections 38(a) and 42 of the Internal Revenue Code of 1986, as amended and the United States Department of the Treasury Regulations (the "Code");

WHEREAS, the Owner is or shall acquire a fee or lessee's interest in a _____ unit residential rental housing project located on lands within the City of _____, County of _____, State of Arizona, the legal description of which is more particularly set forth in the Deed of Trust (as hereafter defined), and is incorporated herein by this reference (the "Project");

WHEREAS, in connection with the Owner's acquisition of its interest in the Project, the Lender made a loan in the original principal amount of \$ _____ to Owner (the "Loan"). The Loan is evidenced by that certain promissory note in the original principal amount of \$ _____ made by the Owner to the order of the Lender (the "Note");

WHEREAS, the Owner's repayment of the Loan and performance of the terms of the Note is secured by a lien on the Project created by that certain Deed of Trust, Assignment of Rents and Security Agreement dated _____, 200_ and recorded on _____, 200_ in the official records of the State of Arizona, County of _____ Recorder's Office at Instrument No. _____ (the "Deed of Trust") (the Note, the Deed of Trust and each and every other document and instrument executed by the Owner in connection with the making of the Loan by the Lender are collectively referred to as the "Lender Loan Documents");

WHEREAS, the Department and the Owner have entered into that certain Declaration of Affirmative Land Use And Restrictive Covenants Agreement dated _____, 200_, and recorded in the official records of the State of Arizona, County of _____ Recorder's Office, Instrument No. _____ (the "Declaration") pursuant to which, under the terms of the Declaration, the Department shall allocate federal low-income tax credits to the Project;

WHEREAS, the allocation of the federal low-income tax credits to the Project by the Department is of material benefit to the Lender;

WHEREAS, certain provisions of the Declaration are required by federal law to protect the rights of the Project's tenants in the event the Project is acquired by foreclosure or instrument in lieu of foreclosure; and

WHEREAS, the Department requires the execution and delivery of this Agreement by the Lender and the Owner as a condition to the Department's entering into the Declaration.

NOW, THEREFORE, in consideration of the premises and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENTS:

1. Accuracy of the Recitals. The parties hereby acknowledge the accuracy of the Recitals which are incorporated herein by this reference.
2. Consent to Execution. The Lender hereby consents to the execution by the Owner of the Declaration.
3. Subordination. The Lender hereby subordinates its lien(s) to the rights and interests created pursuant to Section 4(b) of the Declaration such that a foreclosure (or the execution of an instrument in lieu of foreclosure) shall not extinguish such rights and interests.
4. Acknowledgment and Agreement Regarding Three-Year Period After Termination. The Lender acknowledges and agrees that pursuant to Section 4(a) of the Declaration, the Declaration will terminate on the date the project is acquired by foreclosure or instrument in lieu of foreclosure (unless it is determined that such acquisition is part of an arrangement with the Owner a purpose of which is to terminate such period); provided, however, Lender hereby acknowledges and agrees that the acquisition of the Project by any party by foreclosure or instrument in lieu of foreclosure shall be subject to the provisions of Section 4(b) of the Declaration, which provisions shall continue in full force and effect for a period of three (3) years from the date of such acquisition; provided, further, that such provisions shall not apply during such period if and to the extent that compliance therewith is not possible as a consequence of damage, destruction, condemnation or similar event with respect to the Project.
5. Lender Loan Documents. The Lender agrees that should any provision of any Lender Loan Document purport to limit or impair any rights of the Department under Section 4(b) of the Declaration, then such provision shall be null and void and of no force and effect.

6. Absolute Subordination. The Department shall have absolutely no duty or responsibility, and the priority of the provisions of Section 4(b) of the Declaration over the Lender Loan Documents shall in no way be affected or diminished by any failure of the Department regarding any act or omission by the Department relating to the provisions of Section 4(b) of the Declaration, the Owner or otherwise.

7. Controlling Instrument. In the event of any conflict between this Agreement and any of the Lender Loan Documents, this Agreement shall control.

8. Successors, Assigns and Participants. This agreement applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, participants, successors and assigns.

9. Counterparts. This agreement may be executed in any one or more counterparts, each of which in the aggregate shall constitute one and the same Agreement.

10. Governing Law. This Agreement shall be controlled by, governed in accordance with and enforced under the internal laws of the State of Arizona without regard to conflicts of law principles.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative as of the day and year first above written.

AGREED AND ACKNOWLEDGED:

"OWNER":

By _____

Its _____

LENDER:

a(n) _____

By _____

Its _____

ARIZONA DEPARTMENT OF HOUSING
ITS SUCCESSORS AND/OR ASSIGNS
an agency and instrumentality of the State of
Arizona

By _____

Sheila D. Harris, Ph.D.

It's _____
Director

State of Arizona

County of Maricopa

The foregoing instrument was acknowledged before me this ____ day of _____, 200_, by _____, the _____ of Arizona Department of Housing, its successors and/or assigns an agency and instrumentality of the State of Arizona, on behalf of the State.

(Seal and Expiration Date)

Notary Public

State of _____

County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200_, by _____, the _____ of _____, a(n) _____, on behalf of the _____.

(Seal and Expiration Date)

Notary Public

State of _____

County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200_, by _____, the _____ of _____, a(n) _____, on behalf of the _____.

(Seal and Expiration Date)

Notary Public