

**CITY CLERK
ORIGINAL**

C-7945-5
02/24/2015

CITY OF GLENDALE, ARIZONA

**CONSENT AND SUBORDINATION
AGREEMENT**

(State of Arizona, Arizona Department of Housing,
Rental Program Administrator)

(PLEASE DO NOT REMOVE ~ THIS IS PART OF THE OFFICIAL DOCUMENT)

When recorded return to:

RLS42-5-2-2---
chagollaj

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"), dated this 1st day of April, 2015 by and between The City of Glendale, an Arizona municipal corporation, ("City") and its successors and assigns (the "Lender") and the State of Arizona, Arizona Department of Housing, a constituent department and an agency of the State of Arizona, together with its successor and/or assignees to its rights, duties and obligations (the "Department"); and acknowledged to by Norwood Village Apartments, LLC, a Wisconsin limited liability company ("Owner").

RECITALS

- A. The Department has been designated by the State of Arizona pursuant to Arizona Revised Statute Section 41-3901 *et seq.*, and by the Arizona Revised Statutes Section 35-728(B) and (E) as the designated housing credit agency for the State of Arizona for allocation of tax credits under the Low Income Housing Tax Credit program ("Tax Credits") as described in Sections 38(a) and 42 of the Internal Revenue Code of 1986, as amended and the United States Department of the Treasury Regulations (collectively the "Code");
- B. The Owner is the owner of a fee interest in a 95-unit residential rental housing project located on lands within the City of Glendale, County of Maricopa, 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");
- C. On February 28, 2012 City and Owner entered into a Development Agreement and Promissory Note Deferred Loan whereby Owner agreed to repay City \$1,800,000 that City provided owner to purchase and develop low-income housing at Norwood Village. On January 28, 2014, the City and Owner entered into the first Amendment to The Development Agreement to increase the amount loaned to Owner another \$390,000.00. A Promissory Note Deferred Loan Deed of Trust was there after executed for the benefit of the City.
- D. 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 MARCH 23, 2012 and recorded on MARCH 28, 2012 in the official records of the State of Arizona, County of MARICOPA Recorder's Office at Instrument No. 20120257052 (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");
- E. The Department and the Owner have entered into that certain Declaration of Affirmative Land Use and Restrictive Covenants Agreement dated December 29, 2014, and recorded in the official records of the State of Arizona, County of Maricopa Recorder's Office, Instrument No. 2014-0855973 (the "Declaration") pursuant to which, under the terms of the Declaration, the Department shall allocate

federal tax credits under the Low Income Housing Tax Credit program ("Tax Credits") as described in Sections 38(a) and 42 of the Internal Revenue Code of 1986, as amended (collectively, the "Code") to the Project;

- F. The allocation of the Tax Credits to the Project by the Department is of material benefit to the Lender;
- G. 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
- H. 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:

AGREEMENT

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 paragraph 9(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 paragraph 9(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 paragraph 9(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 paragraph 9(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 Paragraph 9(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 paragraph 4 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.

[remainder of page intentionally blank]

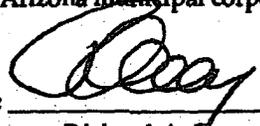
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative as of the day and year first above written.

AGREED:

SENIOR LENDER:

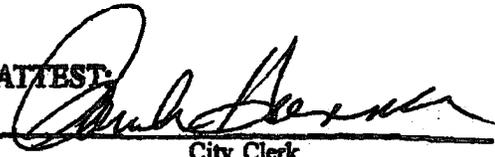
THE DEPARTMENT:

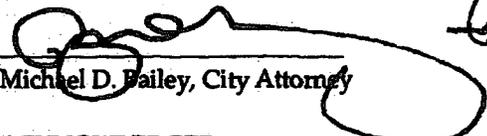
The City of Glendale
an Arizona municipal corporation

By: 
Name: Richard A. Bowers
Title: Acting City Manager


Michael Traylor, Director

APPROVED AS TO FORM:

ATTEST: 
City Clerk


Michael D. Bailey, City Attorney

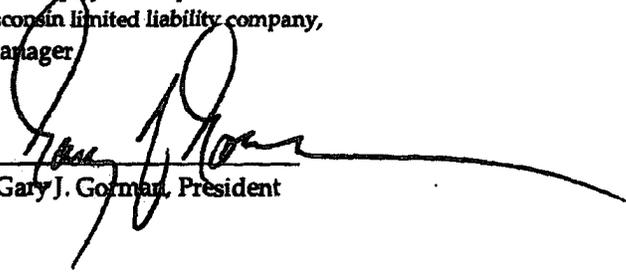
ACKNOWLEDGED:

OWNER:

NORWOOD VILLAGE APARTMENTS, LLC,
a Wisconsin limited liability company

By: Norwood Village Apartments MM, LLC,
a Wisconsin limited liability company,
its managing member

By: Gorman Employee Group Norwood, LLC,
a Wisconsin limited liability company,
its manager

By: 
Gary J. Gorman, President

ACKNOWLEDGEMENTS ON FOLLOWING PAGE:

STATE OF ARIZONA)
) ss
County of Maricopa)

On this the 24 day of February, 2015, before me, a Notary Public, personally appeared Richard A. Bowers, known to me or satisfactorily proven to be the person whose name is subscribed to this instrument and acknowledged that he executed the same. If this person's name is subscribed in a representative capacity, it is for the principal named and in the capacity indicated.

November 14, 2015
Notary Expiration Date

[Signature]
Signature of the Notary Public for the Lender

[STAMP/SEAL]



STATE OF Wisconsin)
) ss
County of Dane)

On this the 9th day of March, 2015, before me, a Notary Public, personally appeared Gary J. Gorman, known to me or satisfactorily proven to be the person whose name is subscribed to this instrument and acknowledged that he executed the same. If this person's name is subscribed in a representative capacity, it is for the principal named and in the capacity indicated.

2-21-2017
Notary Expiration Date

[Signature]
Signature of the Notary Public for Owner

[STAMP/SEAL]

STATE OF ARIZONA)
) ss
County of Maricopa)



SUSAN E. BUSH
Notary Public - Arizona
Maricopa County
Expires 01/21/2017

On this the 10th day of March, 2015, before me, a Notary Public, personally appeared Michael Traylor, known to me or satisfactorily proven to be the person whose name is subscribed to this instrument and acknowledged that he executed the same. If this person's name is subscribed in a representative capacity, it is for the principal named and in the capacity indicated.

2-21-2017
Notary Expiration Date

[Signature]
Signature of the Notary Public for the Department

[STAMP/SEAL]

