PETITION FOR REVIEW OF TAXPAYER NOTICE OF CLAIM

Pursuant to A.R.S. § 42-16254

FOR PETITIONS FILED IN MARICOPA OR PIMA COUNTY, SUBMIT TO THE STATE BOARD OF EQUALIZATION (SBOE).
IF FILED IN ANY OTHER COUNTY, SUBMIT TO THE COUNTY BOARD OF EQUALIZATION.

RECEIVED
COCHISE COUNTY
BOARD OF SUPERVISORS
2010 MAY 30 P 1:43

- File this petition within 150 DAYS after the original filing date of the taxpayer notice of claim if dissatisfied with the Assessor's decision.
- **Keep a copy for your records** and mail or hand deliver one copy to either the County or State Board of Equalization.
- Deliver one copy to the Tax Officer. If mailed, send **certified mail**.
- Include an Agency Authorization form with this petition if the agent has not represented the taxpayer at the Assessor level.
- Complete Items 1 through 8 where applicable.

1. COUNTY Cochise BOOK/MAP/PARCEL 123 - 43 - 006 ACCOUNT NUMBER

2. PROPERTY ADDRESS OR LEGAL DESCRIPTION 750 West Union Street, Benson, Arizona

3. TYPE OR PRINT OWNER'S NAME AS LISTED ON TAX ROLL
Villa Del Sol of Benson, LP
1277 Shoreline Lane
Boise ID 83702

4. MAIL DECISION TO:
Frazer Ryan Goldberg & Arnold LLP
3101 N. Central Ave., Ste. 1600
Phoenix AZ 85012

5. COMPLETED BY: **(Owner, Agent, or Attorney)** Michael P. Killion
Frazer Ryan Goldberg & Arnold LLP
3101 N. Central Ave., Ste. 1600, Phoenix, AZ 85012 (602) 277-2010
TELEPHONE NUMBER
AGENTS ONLY: State Board of Appraisal # 2012033 SBOE # **(Pima and Maricopa Counties Only)**

6. **BASIS FOR THIS PETITION:** Additional documents submitted must contain the book, map and parcel number or tax roll number and be attached to the petition. Evidence contained in this appeal could be the basis for either increasing or decreasing the valuation, changing the classification, or no change.
THIS PETITION IS BASED ON THE FOLLOWING METHOD(S) OF VALUATION: MARKET ☐ COST ☐ INCOME ☑
Error in failing to account for the legal restrictions on the Subject Property. This Notice of Claim includes APN(s) 123-43-006 and 123-43-007. The requested correction includes the total value for both parcels.

7. **TAX OFFICER'S PROPOSED CORRECTION**

2009 TAX YEAR	LEGAL CLASS 4	LAND FCV:	
		IMPS. FCV:	
	ASSMT. RATIO 10	TOTAL FCV	1,622,675
		TOTAL LPV:	1,457,523
TAX YEAR	LEGAL CLASS	LAND FCV:	
		IMPS. FCV:	
	ASSMT. RATIO	TOTAL FCV:	
		TOTAL LPV:	
TAX YEAR	LEGAL CLASS	LAND FCV:	
		IMPS. FCV:	
	ASSMT. RATIO	TOTAL FCV:	
		TOTAL LPV:	

OWNER'S OPINION OF VALUE

2009 TAX YEAR	LEGAL CLASS 4	LAND FCV:	
		IMPS. FCV	
	ASSMT. RATIO 10	TOTAL FCV:	518,037
		TOTAL LPV:	518,037
TAX YEAR	LEGAL CLASS	LAND FCV:	
		IMPS. FCV	
	ASSMT. RATIO	TOTAL FCV:	
		TOTAL LPV:	
TAX YEAR	LEGAL CLASS	LAND FCV:	
		IMPS. FCV:	
	ASSMT. RATIO	TOTAL FCV:	
		TOTAL LPV:	

8. I hereby request that the proposed correction described above be reviewed by the County or State Board of Equalization and that the Board consider the provided information in making its determination. I hereby affirm that the information included or attached is true and correct.

X Michael P. Killion 5/28/2010
SIGNATURE OF PROPERTY OWNER OR REPRESENTATIVE DATE

☐ IN PIMA AND MARICOPA COUNTIES ONLY:
Check here if you want this appeal to be heard on the record and submit any additional written or typed information with this form. This means that neither you nor the assessor will appear in person before the State Board of Equalization to offer oral testimony.

FOR OFFICIAL USE ONLY

BOARD OF EQUALIZATION DECISION	FULL CASH VALUE $	LIMITED PROPERTY VALUE $	LEGAL CLASS	ASMT RATIO

BASIS FOR DECISION:

DATE RECEIVED DATE DECISION MAILED CHAIRMAN OR CLERK OF THE BOARD

FOR OFFICIAL USE ONLY

DOR 82179C-1 (03/09)

Frazer
Ryan
Goldberg &
Arnold LLP

May 28, 2013

File #:

Cochise County Board of Equalization
1415 Melody Lane, Bldg. B
Post Office Box 168
Bisbee, AZ 85603

Re: Petition for Review of Taxpayer Notice of Claim for Tax Year 2009
APNs 123-43-006 and 123-43-007

Dear Board Members:

I write in regard to APNs 123-43-006 and 123-43-007 (the "Subject Property"). We filed the attached notice of claim for tax years 2009 and withdraw our claims for 2010, 2011, and 2012.

At issue is an error as it relates to the legal restrictions imposed by the Declaration of Affirmative Land Use and Restrictive Covenants ("LURA" or "Land Use Restriction Agreement")[1] that are imposed on the Subject Property. The existence of the LURA significantly affects the Subject Property's value and was not taken into account in valuing the Subject Property for the tax years in question.

Under A.R.S. § 42-16251(3)(e) an "error" is "any mistake in assessing or collecting property taxes resulting from… a specific legal restriction that affects the subject property and that is objectively verifiable without the exercise of discretion, opinion or judgment and that is demonstrated by clear and convincing evidence."

Because of the mistake regarding the legal restrictions imposed on the Subject Property, there has been a mistake in the assessment of the Subject Property that must be corrected. Below is a detailed explanation of the basis for our claim.

[1] See Declaration of Affirmative Land Use and Restrictive Covenants Agreement Dated December 5, 2002 between Villa Del Sol of Benson Limited Partnership and the Arizona Department of Housing, attached as Exhibit A.

3101 North Central Avenue, Suite 1600
Phoenix, AZ 85012

602.277.2010
Fax: 602.277.2595
www.frgalaw.com

Introduction

The Subject Property is a 40-unit LIHTC apartment complex known as the Villa del Sol Apartments. It is located on 750 West Union Street in Benson, Arizona.

For the tax year in question, the property was valued using the cost approach. No adjustment was made to account for the economic obsolescence due to the legal restrictions on the property. Instead of accounting for its legal restrictions, the Subject Parcel was valued as a non-rent-restricted apartment complex operating without any of the significant limitations imposed on LIHTC properties.

To operate as a LIHTC property, owners are required to follow certain state and federal restrictions that are contained in the land use restriction agreement. The deed restrictions imposed by the LURA are not personal to a particular owner, but rather are deed restrictions that run with the land. That is, if an owner buys the project, it buys the restrictions along with it.

The LURA imposes several key restrictions. First, the Subject Property is subject to occupancy restrictions. All the units must be occupied by households whose income is, at most, 60% and, in some instances, 50%, 30, or 20% or less of the area median gross income. In addition, 100% of the units must be set aside for individuals or families where at least one individual in each unit will be 55 years of age or older. If no qualified low-income tenant can be found, the affected unit(s) must be kept off the market and remain untenanted.

Second, the gross rents charged to tenants must conform to standards established as "low income" by the federal and state government. The Arizona Department of Housing annually publishes the "maximum" allowable rents that a LIHTC apartment may charge. In addition, if utilities are not included in the rent, the costs of the utilities are required to be deducted from the maximum allowable rents. These rental rate restrictions are typically imposed on a property for a minimum of a 15– to 30–year period.

Finally, because of the nature of the LIHTC program, the developer can rarely sell the property. The tax credits run out after ten years, but the restrictions may last for another twenty years beyond that time. A purchaser would, in effect, be buying only the restrictions without the benefit of the credits. Moreover, because there are stiff penalties including recapture of the tax credits if there is a violation of the rent restrictions, owners are as a practical matter prohibited from selling.

Thus, if there were two identical apartment complexes side by side, Apartment A, which is subject to the LURA, and a conventional market-rent apartment complex, Apartment B, which is not subject to the LURA, Apartment A must be valued substantially less than Apartment B.

Legal Basis for Notice of Claim

The Arizona Court of Appeals in *Lyons v. State Board of Equalization*, 209 Ariz. 497, 501, 104 P.3d 867, 871, recognized that "a taxpayer may initiate proceedings under" A.R.S. § 42-16254(A) "to correct errors that result[] in an improper assessment of tax." The court pointed out that the definition of "error" is quite broad and includes "'any mistake in assessing…property tax' resulting from specified actions."[2]

A.R.S. § 42-16251(3)(e) defines an error as "a specific legal restriction that affects the subject property and that is objectively verifiable without the exercise of discretion, opinion or judgment and that is demonstrated by clear and convincing evidence." Here, the attached LURA specifies the legal restrictions imposed on the operation of the Subject Property and, as outlined above, affects its value.

Once an "error" has been identified, A.R.S. § 42-16257 requires that "[i]n valuing any property pursuant to this article, the assessor… shall use the valuation criteria that were in effect on the valuation date." Thus, once it has been determined that the property should have been assigned the correct use code for a LIHTC property, the Subject Property must then be valued using the correct valuation methodology for LIHTC properties.

Correct Valuation Criteria for Valuing LIHTC Properties

Over the past ten years, a consensus has emerged among jurisdictions regarding the correct methodology to use when valuing LIHTC properties.[3] Courts, assessors, and legislatures typically use the income capitalization approach, rather than the sales comparison or the cost approaches, for valuing LIHTC properties.

The sales comparison approach is difficult to apply to the valuation of LIHTC properties because they rarely sell and because of the existence of a property's LURA. The LURA restricts the potential rent that can be charged and the owner's ability to sell the property. Thus, courts and the appraisal literature are generally in agreement that using the market sales approach to value LIHTC properties "is likely to be of little value because comparable sales are highly

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2 *Lyons*, 209 Ariz. at 501, 104 P.3d at 871.

3 Douglas S. John, "Is a Consensus Emerging on LIHTC Property Valuations?" *Affordable Housing Finance* (September 14, 2011) available at http://www.housingfinance.com/news/ahf/091411-ahf-Is-a-Consensus-Emerging-on-LIHTC-Property-Valuations.htm.

unlikely," and thus "units of comparison" are not available for comparison and adjustment of value.[4]

Using the cost approach to value LIHTC properties fails for two reasons. First, LIHTC projects preclude the principle of substitution that is an underlying assumption of the cost approach. Substitution holds that a knowledgeable buyer would pay no more for a property than the cost to acquire a similar site and to construct similar improvements. But without federal tax credits, most low-income housing would be financially unfeasible, and thus never constructed. Thus, the cost method overstates the value of the project.[5] Second, the LURA restrictions create functional and economic obsolescence, both of which are inherently difficult to quantify.[6]

In Arizona, the courts have provided guidance on how LIHTC properties should be valued using the income capitalization approach. In *Cottonwood Affordable Housing v. Yavapai County et al.*,[7] Arizona's Tax Court reached two key conclusions on how the income approach should be applied to LIHTC properties. First, the tax credits themselves are intangible personal property, and thus must be excluded when valuing a LIHTC property for ad valorem purposes. Second, the actual income and expenses of the project should form the basis for valuation. The Tax Court's key observation was that:

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[4] Richard E. Polton, "Valuing Property Developed with Low-Income Housing Tax Credits," 62 *The Appraisal Journal* 446, 452 (1994); *Deerfield 95 Investor Assocs.*, 1999 Conn. Super. LEXIS 1747; *Wilsonville Heights Assoc. v. Dept. of Revenue*, 339 Or. 462, 465 (Or. 2005).

[5] *Cascade Court Limited Partnership v. Noble*, 20 P.3d 997, 1002 (Wash. App. 2001) (the court observed that appraisal literature and case law regarding rent-restricted low-income housing argue against the use of the cost method, citing Appraisal Institute, *The Appraisal of Real Estate* 338 (11th ed. 1996); as well as citing David C. Nahas, *Appraising Affordable Multifamily Housing*, Appraisal Journal, July 1994, Vol. 62 No. 3; Richard E. Polton, *Valuing Property Developed with Low Income Housing Tax Credits*, The Appraisal Journal, July 1994; Laurence G. Allen, *Valuing Subsidized Housing for Property Tax Purposes*, Appraisal Journal, January 1986, Vol. 54, No. 1. See also *Community Development Co. of Gardner v. Board of Assessors of Gardner*, 337 Mass. 351, 385 N.E. 2d 1376 (1979) (construction costs of federally rent-controlled low-income housing overstate the market value of a project since, in the absence of governmental subsidies, the rental stream produced by the property would not justify actual expenditure on construction); *Bayridge Assoc. Ltd. Partnership v. Dep't. of Revenue*, 13 Or. Tax 24 (1994) (due to governmental restrictions cost approach would give excessive indication of value), *aff'd*, 892 P.2d 1002 (Or. 1995).

[6] Kenneth N. Alford and David C. Wellsandt, "Appraising Low-Income Housing Tax Real Estate," *The Appraisal Journal* 350, 356 (Fall 2010).

[7] 205 Ariz. 427, 72 P.3d 357 (Tax Ct. 2003).

> the subject property's value should be determined from its restricted income potential without regard to the LIHTCs which create a disincentive for a current owner to sell, and little if any incentive for a new buyer to buy (emphasis added).[8]

Because the restrictions on the rent must be considered when valuing LIHTC properties, actual income and expenses, rather than market, should be used to correct the valuation. In arriving at a corrected assessment (attached as Exhibit B), we have used the Subject Property's actual rent-restricted income and expenses[9] and have also accounted for reserves for replacements.[10]

Finally, the capitalization rate for a LIHTC property is typically higher than for conventional apartments for a number of reasons. First, the rent restrictions, government supervision, higher expenses, and exposure to possible tax credit recapture all distinguish a LIHTC project from a typical market complex, and support the use of a higher capitalization rate in an income analysis. In addition, as was recently outlined in *The Appraisal Journal*, the capitalization rate for a LIHTC property is typically higher because of "the higher 'going-in' capitalization rate necessary to induce an investor to purchase a LIHTC Property which has limited terminal proceeds."[11] In other words, the reversionary value of a LIHTC property is substantially less than a conventional property. This particular author suggested a capitalization rate 300 basis points higher than conventional apartments.

We have started with a base capitalization rate of 8% to 9% for a Class A apartment complex, generated from RealtyRates.com Investor Survey for the tax years in question. From there, several adjustments were made.

First, Class A apartments in major metropolitan centers will sell for a lower capitalization rate than in a rural area like Cochise County. Furthermore, the Subject Property is not a Class A

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8 *Cottonwood Affordable Housing*, 205 Ariz. at 430, 72 P.3d at 360, emphasis added.

9 It is important to note that while rental rates for LIHTC properties are limited, expenses are not. In fact, operating expenses for affordable housing tend to be higher than those for market-rate units. LIHTC owners experience higher expenses because they must meet certain reporting, record-keeping, and documentation requirements. Annual certification of tenant income and eligibility, as well as regulatory reporting to various funding sources, can be time-consuming and staff-intensive. Also, expenses that grow at the rate of inflation can cause net operating income to decrease if inflation exceeds the growth in the median income upon which the rents are based. Additionally, maintenance costs may be higher in affordable developments due to high turnover rates and larger households.

10 We have added reserves for replacement of $200 per unit, at 60 units, or $12,000.

11 Patrick C. O'Connor, "Valuation of Texas LIHTC Apartments Restricted by Land Use Restriction Agreements," *The Appraisal Journal* 47, 52 (Winter 2005).

apartment complex. This warrants an adjustment of at least between 100 and 200 basis points. We have accounted for a 100 basis point adjustment (see Exhibit B, Location Adjustment).

Second, a LIHTC property is an extremely illiquid asset. Most "market value" definitions assume a willing buyer and willing seller in the open market. Such a definition cannot be easily applied to a LIHTC project. A LIHTC owner cannot sell, transfer, or exchange the property without meeting certain conditions and obtaining government approvals. The LURA dictates whom the property can be sold to, and the property's restriction survives a sale. Tax credits typically expire after 10 years, but the restrictions may last for 20 years or more. Thus, a purchaser would, in effect, be buying only the restrictions without getting the benefit of the tax credits.

These factors make for an extremely illiquid asset. An illiquid investment is inferior to and worth less than a liquid asset. The illiquidity of a LIHTC project should be accounted for in the property tax assessment. For the reasons discussed above, we adjusted the capitalization rate by 300 basis points (see Exhibit B, LIHTC Adjustment).

We have also loaded the capitalization rate using an effective tax rate for the Subject Property of approximately 1.0% per year.

Conclusion

Based on the discussion above, for the Subject Property we derived the income analysis for each tax year as shown on Exhibit B. Because of the error regarding the Subject Property's use, the full cash value should be corrected for tax year 2009 to a full cash value of $518,037.

Sincerely,

Michael P. Killion

MPK:alk
Enclosures

Exhibit A

SEQ # 021241042
OFFICIAL RECORDS
COCHISE COUNTY
DATE HOUR
12/23/02 2
REQUEST OF
COMMUNITY DEVELOPMENT PARTNE
CHRISTINE RHODES-RECORDER
FEE : 33.00 PAGES : 25

WHEN RECORDED, RETURN TO
Arizona Department of Housing
Attn: Rental Housing Program Manager
3800 North Central Ave., Suite 1200
Phoenix, Arizona 85012

DECLARATION OF AFFIRMATIVE LAND USE AND RESTRICTIVE COVENANTS AGREEMENT

This Declaration of Affirmative Land Use and Restrictive Covenants Agreement (the "Agreement"), dated this 5th day of December, 2002 by and between Villa del Sol of Benson L.P. whose address is 1277 Shoreline Lane, Boise, Idaho, 83702 and its successors and assigns (the "Owner") and the Arizona Department of Housing, an agency and instrumentality of the State of Arizona, together with any successor and/or assignees to its rights, duties and obligations (the "Department").

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 (collectively, the "Code"); and

WHEREAS, the Owner is or shall be the owner or lessee of a Forty (40) unit residential rental housing project located on lands within the City of Benson, County of Cochise, State of Arizona, the legal description of which is more particularly set forth in Attachment I and is known as Villa del Sol Apartments (herein the "Project"); and

WHEREAS, the Owner has applied to the Department for an allocation of federal low-income housing tax credits to the Project; and

WHEREAS, in order for the Project to receive an allocation of federal low- income housing tax credits, and the Owner to utilize such credits, the Project must comply continuously with Section 42(a) *et. seq.* and other applicable sections of the Code; and

WHEREAS, the Owner has made certain representations to the Department in the Owner's 2001 Low-Income Housing Tax Credit Application, as it may have been amended or supplemented by the Owner's Carryover Allocation Application, if any, progress reports and the Owner's Final Allocation Application (collectively, the "Application"), which the Department has relied upon in considering the Application for a reservation and allocation of tax credits; and

WHEREAS, the Owner's representations to the Department in the Application include representations, including but not limited to, representations (i) that there will be Forty (40) units available for rental and residential use in the Project, but not including any unit occupied by a manager of the Project ("Residential Rental Units"), (ii) that there will be Forty (40) Residential Rental Units in the

Project designated as low income units which will meet the definition of a low income unit as set forth in Section 42(i)(3)(A) of the Code (the "Low Income Units"), (iii) that it shall lease the Low Income Units to individuals or families whose income meets the guidelines set forth in Attachment II attached hereto and (iv) that the Project will have the characteristics (the "Project Characteristics") set forth on Attachment II hereto; and

WHEREAS, the Project may now or hereafter be encumbered by a third party loan (the "mortgage loan"), the indebtedness of which shall be evidenced by a promissory note, secured by a mortgage or trust deed (which shall be a first lien on the property) and other security instruments (collectively, the "Loan Documents"); and

WHEREAS, the Code requires that the Owner execute and deliver this Agreement in connection with the allocation of low-income housing tax credits to the Project and that this Agreement be recorded in the official land records of the county in which the Project is located to create covenants running with the land for the purpose of enforcing certain requirements of Section 42(a) *et. seq.*, the Project Characteristic requirements and any other covenants, terms and conditions of this Agreement in accordance with the Code; and

WHEREAS, based upon the Owner's representations, the Department is willing to allocate low-income housing tax credits to the Project, provided that the Owner, by entering into this Agreement, consents to be regulated by the Department in order that the Department may enforce the Project Characteristics and other covenants, terms and conditions of this Agreement; and

WHEREAS, the Owner, under the terms of this Agreement, intends, declares and acknowledges and covenants for itself, its successors and assigns that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project or any portion thereof, are covenants running with the Project land for the term stated herein and are binding upon all subsequent owners of the Project land for such term;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth, and of all other valuable consideration, the Owner and the Department agree as follows:

1. Incorporation. The above recitals are incorporated herein as a substantive portion of this Agreement by signature of the parties herein below.

2. Representations, Covenants and Warranties of Owner. The Owner makes the following representations and warranties in conjunction with the Application to induce the Department to enter into this Agreement and further represents, covenants and warrants to the Department that:

(a) The Owner (i) is a Limited Partnership duly organized under the laws of the State of Arizona, and qualified to transact business within the State of Arizona pursuant to either Title 29 or Title 10, Arizona Revised Statutes; (ii) has the power and requisite authority to own its properties and assets as owned, where owned, and to carry on its business as now being conducted (and as now contemplated by this Agreement and the Loan Documents); and (iii) has the full legal right, power, and authority to execute and deliver this Agreement and the Loan Documents and to perform all undertakings of the Owner hereunder.

(b) The execution and performance of this Agreement and the Loan Documents by the Owner (i) will not violate or, if applicable, have not violated any provision of law, rule or

regulation, or any order of any court or other governmental agency and (ii) will not violate or, if applicable, have not violated any provision of any indenture agreement, mortgage, mortgage note or other instrument to which the Owner is a party or by which it or its property is bound, and (iii) will not result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

(c) The Owner will, at the time of execution and delivery of this Agreement, have good and marketable title to the real property and improvements constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, the Loan Documents or other permitted encumbrances).

(d) There is presently no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair the Owner's right to carry on business substantially as now conducted (and as now contemplated by this Agreement and the Loan Documents) or which would materially, adversely affect its financial condition. Neither the Owner, its principals, shareholders, managers or general partners, as the case may be, have any judgment entered against them which would, when recorded, constitute a lien against or otherwise impair the security of the Project.

(e) The Project constitutes and will constitute residential rental property as defined in Section 42 of the Code; the Residential Rental Units of which will be rented or available for rental on a continuous basis to members of the general public as further restricted by Attachment II hereto. The Project consists of one or more proximate buildings or structures containing one or more similarly constructed accommodations containing separate and complete facilities for living, sleeping, eating, cooking and sanitation which are to be used on other than a transient basis as the term is defined in the Code and facilities which are functionally related and subordinate to such accommodations. No actions will be taken by the Owner which will in any way affect the use of the Project therefor.

(f) The Owner covenants that it will not knowingly take or permit to be taken any action which would have the effect, either directly or indirectly, of subjecting the Owner or the Project to non-compliance with Section 42(a) *et. seq.* of the Code.

(g) The Owner may sell, transfer or exchange the Project or any portion thereof at any time, but the Owner shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Agreement and otherwise subject to the requirements for a sale, transfer or exchange as identified in Section 42(a) *et. seq.* This provision shall not act to waive any other restriction on such sale, transfer or exchange as contained in the Code or adopted by the Department.

(h) The Owner further covenants and agrees to pay to the Department such fees in the amounts and at such times as the Department shall, in its sole discretion, reasonably determine and require to Owner to pay for the costs of monitoring the Project by the Department. Monitoring is required by Federal law and may be performed by the Department periodically, but the fees will be assessed no more frequently than annually.

(i) The Owner covenants and agrees not to discriminate on the basis of race, creed, color, sex, age, handicap, marital status or national origin in the leases for occupancy of the Project or in conjunction with the employment or application for employment of any person or persons for the operation and management of said Project, except as provided in Attachment II.

(j) The Owner covenants and agrees that it shall not: (i) grant commercial leases or licenses relating to the Project (other than commercial leases with respect to insubstantial portions of the Project on a square footage basis) or permit the sale, transfer, conveyance or other encumbrance of the Project or any portion thereof (except for Residential Rental Unit leases) during the effective term of this Agreement, provided that this covenant shall not apply to any encumbrance, conveyance or transfer in conjunction with a sale, transfer or other conveyance of the Project that complies with the requirements of the Loan Documents and this Agreement; (ii) demolish any portion of the Project or substantially subtract from any real or personal property comprising the Project; or (iii) permit the use of any Residential Rental Unit for any purpose other than rental housing during the term of this Agreement.

(k) The Owner covenants and agrees that if it shall become aware of any situation, event or condition which would result in non-compliance of the Project or the Owner with Section 42 of the Code, then the Owner shall promptly give written notice thereof to the Department.

(l) Before the Department prepares and files IRS Form 8609 with the Internal Revenue Service, each lienholder on the Project shall execute and record the Department's current form of a consent and subordination agreement, an example of which is set forth in Attachment III (a "Consent and Subordination Agreement").

(m) Except for those provisions of the Loan Documents which may be contradictory to the provisions of this Agreement and which are not subordinated to the Agreement by any Consent and Subordination Agreement, the Owner warrants that it has not and will not execute any other agreement or otherwise become a party to such an agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede the requirements and conflicts contained in any other agreement. In the event of a conflict between the provisions of this Agreement and the Loan Documents, the provisions of the Loan Documents shall control, except as provided in any executed Consent and Subordination Agreement.

(n) The Owner shall ensure that Low Income Units occupied by low-income tenants shall be of comparable quality to other Residential Rental Units in the Project unless the Owner has elected to exclude such excess costs for non-comparable Low Income Units from eligible basis pursuant to the terms of the Application and Section 42 of the Code.

Subject to any requirements of any Lender as set forth in the Loan Documents, the Owner represents, warrants and agrees that if the Project, or any portion thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use its best efforts to repair and restore same to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter operate the Project in accordance with the terms of the Loan Documents and this Agreement. The Department shall be a party to any agreement relating to the use of condemnation proceeds or insurance proceeds from damage to the Project to repair and restore the Project. Provided, however, that if more than 25% of the Project is damaged or destroyed, or shall be condemned or otherwise acquired for public use, the Owner shall not be obligated to repair or restore the Project. If the Owner chooses not to repair or restore the Project, then the Department may review the Project to determine compliance with the requirements of Section 42 of the Code.

3. Term of Agreement.

(a) Except as otherwise provided in Paragraph 4 of this Agreement, this Agreement and the restrictions and covenants contained herein with respect to any building which is part of the Project shall be in effect during the "Extended Use Period". The Extended Use Period shall:

(i) Begin on the first day in the compliance period on which the building is part of a qualified low-income housing project, and

(ii) End on the date which is the later of 15 years after the close of the compliance period or the date specified in Attachment II.

(b) For purposes of this Agreement, the term "compliance period" means, with respect to any building, the period of 15 taxable years beginning with the first taxable year of the credit period with respect thereto as determined pursuant to Section 42 of the Code.

4. Termination Upon Foreclosure or No Buyer Willing to Maintain Low-Income Status.

(a) Except as otherwise provided in subparagraph 4(b) hereof, the Extended Use Period for any building which is part of the Project shall terminate:

(i) On the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Internal Revenue Service (the "IRS") determines that such acquisition is part of an arrangement with the Owner (or any successor owner of the Project) a purpose of which is to terminate this Agreement during the term hereof, or

(ii) On the last day of the one-year period beginning on the date (after the 14th year of the compliance period) the Owner, or any successor thereto, submits a written request to the Department to find a person to acquire the Owner's interest in the low-income portion of the building, if the Department is unable to present during such period a qualified contract (as defined in Section 42(h)(6)(F) of the Code) for the acquisition of the low-income portion of the building by any personwho will continue to operate such portion as a qualified low-income building.

(b) The termination of the Extended Use Period pursuant to subparagraph 4(a) shall not be construed to permit before the close of the three-year period following such termination:

(i) the eviction or termination of tenancy (other than for good cause) of an existing tenant of any Low Income Unit, or

(ii) Any increase in the gross rent with respect to such Low Income Unit not otherwise permitted by Section 42 of the Code.

5. Occupancy Restrictions. The Owner further represents, warrants and covenants that during the Extended Use Period the occupancy restrictions set forth in Attachment II shall be satisfied.

6. Certifications.

(a) On the date of execution and delivery of this Agreement, the Owner shall notify the Department of the date on which the Residential Rental Units in the Project are first placed in service and deliver the following certifications or documents:

(i) Evidence of transfer of ownership of the Project to the Owner (for projects receiving an acquisition credit);

(ii) For projects requiring a waiver of the ten year holding period requirement in order to obtain a credit for the acquisition of an existing building, a copy of the waiver obtained from the IRS;

(iii) Original certified copy of the Owner's organizational documents, as follows:

(i) If an individual or individuals, a properly notarized affidavit of ownership;

(ii) If a partnership, a copy of the partnership agreement certified by a general partner or the managing general partner;

(iii) If a corporation, certified articles of incorporation and a certificate of good standing from the state of incorporation (not more than sixty (60) days old); and

(iv) If a trust, a copy of the trust agreement certified by the trustee(s).

(iv) Original certification from the Owner of the actual cost of the Project, if, applicable;

(v) Original certification from the Owner that the Project is in full compliance with Section 42 of the Code, that the Project shall continue to comply with Section 42 of the Code during the compliance period as required by the Code; that the information supplied in the Application is and will continue to be true and correct as of the time of allocation of tax credit dollars; and that no ownership change shall occur in the Owner (or the general partner of the Owner, if applicable) without the prior written consent of the Department. If not already provided, the Owner shall also certify the Owner's taxpayer identification number;

(vi) Original certification from the Owner that the Owner has minimized the involuntary displacement of low-income households, and that the Project is available for occupancy by all persons regardless of race, national origin, religion, creed, sex, age or handicap, except as otherwise provided in Attachment II hereto;

(vii) Original Owner certification as to the actual date the Project was "placed in service" for purposes of Section 42 of the Code;

(viii) Original certificate(s) of occupancy from the municipality or other governmental authority having jurisdiction.

(ix) Original release and indemnification agreement agreeing to release the Department and its counsel from any claim, loss, demand or judgment as a result of allocation of tax credit dollars to the Project or the recapture of tax credit dollars by the IRS; and agreement to indemnify the Department, its counsel, agents and employees from any claim, loss, demand or judgment as a result of allocation of tax credit dollars by the IRS identical in form and content to Attachment IV hereto; and

(x) Any and all other documents required by Section 42 of the Code, the Department, the Rules thereunder and any documents that the Department's counsel may require.

(b) By March 15 of each year, the Owner will submit to the Department certifications as required and referenced thereto in the Department's current compliance manual. In addition, Owner shall annually provide to the Secretary of the United States Department of the Treasury (the "Secretary"), or his designee, an Annual Project Certification Report, Rental Schedule and Annual Utility Certification, with such modifications as the Department shall require based upon the rules or regulations established by the Secretary, at such times as shall be required by the Secretary. A copy of such annual certification shall be provided to the Department.

7. Rental Restrictions. The Owner represents, covenants and warrants that, except as otherwise provided in Attachment II, (1) once available for occupancy, each Residential Rental Unit in the Project will be rented or available for rental to the public on a continuous basis and that no low-income tenant may be evicted except for good cause and (2) an applicant cannot be denied occupancy in the Project because the applicant holds a voucher or certificate under Section 8 of the Housing Act of 1937.

8. Transfer Restrictions. The Owner covenants and agrees that it will cause or require as a condition precedent to any conveyance, transfer, assignment or any other disposition of the Project prior to the termination of the rental restrictions and occupancy restrictions provided herein (the "Transfer"), that the transferee of the Project pursuant to the Transfer assume in writing, in a form acceptable to the Department, all duties and obligations of the Owner under this Agreement, including this Agreement. The Owner shall deliver the assumption agreement to the Department prior to the Transfer. This limited Transfer restriction does not affect the rights of the first mortgagee to approve the proposed transfer as required under the Loan Documents.

The Owner further covenants and agrees not to dispose of less than all of its interest in any building composing the Project; and that the Owner will require in connection with any such conveyance or Transfer that the prospective transferee specify in any qualified contract (as defined in Section 42 of the Code) a price of the non-low-income portion of any building equal to its fair market value.

9. Enforcement.

(a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Department, to conduct on-site inspections of the Project land and improvements and to inspect any books and records of the Owner regarding the Project and with respect to the incomes of qualifying tenants which pertain to compliance with the provisions of this Agreement and Section 42 of the Code.

(b) In addition to the information provided for in Section 6 of this Agreement, the Owner shall submit any other information, documents or certifications requested by the Department which the Department shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of this Agreement and Section 42 of the Code.

(c) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of pertinent law or Section 42 of the Code. Moreover, Owner covenants to take any lawful action (including amendment of this Agreement as may be necessary in the opinion of the Department) to comply fully with pertinent law and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service from time to time pertaining to Owner's obligations under Section 42 of the Code and affecting the Project.

(d) The Owner covenants and agrees to inform the Department by written notice of any violation of the Owner's obligations hereunder within five (5) business days of first discovering any such violation, and the Department covenants and agrees to inform the Owner by written notice of any violation of the Owner's obligations hereunder within five (5) business days of first discovering such violation and provide the Owner a reasonable period of time in which to correct such violation. If any such violation is not corrected to the satisfaction of the Department within the period of time specified by the Department, which must be at least thirty (30) calendar days after the date any notice to the Owner is mailed, or within such further time as the Department determines is necessary to correct the violation, but not to exceed any limitations set by applicable regulations, without further notice the Department shall declare a default under this Agreement effective on the date of such declaration of default, and the Department may apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement, or any other remedies at law or in equity or any such other action as shall be necessary or desirable so as to correct non-compliance with this Agreement. The Owner for itself as well as its successors and assigns consents to jurisdiction and venue in the Superior Court of Maricopa County, Arizona for purposes of this provision. The Owner shall be liable to the Department for all costs and expenses (including reasonable attorneys' fees) incurred by the Department in enforcing this Agreement.

(e) The Owner and the Department each acknowledge that the primary purposes for requiring compliance by the Owner with the restrictions provided in this Agreement are to assure compliance of the Project and the Owner with Section 42 of the Code, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING TAX CREDITS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE DEPARTMENT AND THE LOW-INCOME TENANT(S) (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANTS OF THE PROJECT) (OR EITHER OR ALL OF THEM) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY ARIZONA STATE COURT OF COMPETENT JURIS-DICTION, the Owner hereby further specifically acknowledging that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(f) Notwithstanding the foregoing and unless otherwise provided in the Loan Documents, enforcement of this Agreement shall not serve as a basis for a declaration of default under the Loan Documents or acceleration of the mortgage note or result in any claim under the mortgage or

claim against the Project, the mortgage note proceeds, any reserve or deposit made with the first mortgagee in connection with the mortgage loan, or against the rents or other income from the Project.

(g) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the Department and all persons interested in Project compliance under Section 42 of the Code. In performing its duties and obligations hereunder, the Department may rely upon statements and certificates of the Owner pertaining to occupancy of the Project. In addition, the Department may consult with counsel, and the authorization and protection in respect of any action taken or suffered by the Department hereunder in good faith and in conformity with the opinion of such counsel shall be applicable to the Department's reliance upon such opinion of counsel.

10. Covenants Run with the Land; Successors Bound Thereby. Upon execution and delivery by the Owner, the Owner shall cause this Agreement and all amendments and exhibits hereto to be recorded and filed in the official records of the county recorder's office in the county in which this Project is located and, if applicable, with the recording office of the appropriate Indian tribe if the Project is located on tribal land, and pay all fees and charges incurred in conjunction with recording of this Agreement and all addenda or amendments thereto. Upon recording, the Owner shall immediately transmit or cause to be sent directly from the recorder's office to the Department an executed original of the recorded Agreement showing the date, book and page number of recording. The Owner acknowledges and agrees that the Department will not issue IRS Form(s) 8609 constituting final allocation of the credit unless and until the Department has received a recorded executed original of this Agreement. Where pertinent, the Department may require Owner to furnish a preliminary title report for the property prior to or after recordation of this Agreement.

The Owner intends, declares and covenants, on behalf of itself and all future owners and operators of the Project and land upon which the Project is constructed that, during the term of this Agreement, all of the covenants and restrictions set forth in this Agreement regulating and restricting the use, occupancy and transfer of the Project (i) shall be and are covenants running with the Project, encumbering the Project and land upon which the Project sits for the term of this Agreement, and are binding upon the Owner's successors in title and all subsequent owners and operators of the Project and the land upon which the Project sits, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner (and the benefits shall inure to the Department and any past, present, or prospective low-income tenant of the project) and its and their respective successors and assigns during the term of this Agreement. The Owner hereby agrees that any and all requirements of the laws of the State of Arizona to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges of estate or title are intended to be satisfied hereby, or in the alternative, that an equitable servitude has been created to ensure that these restrictions will run with the land. For the longer of the period this credit is claimed or the term of this Agreement (including, if applicable, the three year period described in subparagraph 4(b) hereof), each and every contract, deed or other instrument hereinafter executed conveying the Project or any portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter executed conveying the Project or any portion thereof provides that such conveyance is subject to this Agreement.

The Owner further covenants and agrees to obtain the consent of any prior recorded lien holder on the Project to this Agreement and the recording thereof, and such consent shall be a condition precedent to the issuance of the IRS Form(s) 8609 constituting final allocation of the credit to this Project.

11. Interpretation. Any terms not defined in this Agreement shall have the same meaning as terms defined in Section 42 of the Code.

12. Amendment. This Agreement may be amended with the prior written approval of the Department to correct factual errors contained herein or to reflect changes in pertinent law, Section 42 of the Code and any ruling promulgated thereunder. No amendment to this Agreement may be made without the prior written approval of the Department. The Owner hereby expressly agrees to enter into all amendments hereto which, in the opinion of the Department's legal counsel, are reasonably necessary or desirable to correct factual errors or for maintaining compliance under Section 42 of the Code.

13. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

14. Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To the Department:

Arizona Department of Housing
3800 N. Central Avenue, Suite 1200
Phoenix, Arizona 85012
Attention: Rental Housing Program Manager

To the Owner:

Villa del Sol of Benson L.P.
1277 Shoreline Lane
Boise, Idaho 83702
Attn: Julie Hyatt

The Department, and the Owner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices; certificates or other communications shall be sent.

15. Governing Law. This Agreement shall be governed by the laws of the State of Arizona and, where applicable, the laws of the United States of America. In accordance with Arizona law, the Department and State of Arizona may cancel this Agreement without penalty or further obligation under the provisions of Arizona Revised Statutes Section 38-511. The parties further agree to use arbitration to the extent required by Arizona Revised Statutes Section 12-1518.

16. Project De-certification. Notwithstanding anything in this entire Agreement to the contrary, upon the failure of the Owner to comply fully with the Code, the covenants and agreements contained herein or with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, the IRS or the Department from time to time pertaining to the obligations of the Owner as set forth therein or herein, the Department may, and in addition to all of the remedies provided by law or in equity, request the IRS to decertify the Project for low-income housing tax credits and to immediately commence recapture of the tax credit dollars heretofore allocated to the Project.

17. Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the allocation of tax credit dollars and shall not be deemed to terminate or merge with the awarding of the allocation.

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

"OWNER"

Villa Del Sol of Benson Limited Partnership

By: Homestead Hope, LLC,
a General Partner

By _____

Title Manager

ARIZONA DEPARTMENT OF HOUSING
ITS SUCCESSORS AND/OR ASSIGNS

By Sheila D Harris

Title DIRECTOR 12.19.2002

State of Idaho

County of Ada

The foregoing instrument was acknowledged before me this 5th day of December, 2002 by Julie Hyatt, the Manager of Homestead Hope, LLC, an General Partner, on behalf of the Partnership.

(Seal and Expiration Date) 10-29-07

KATHY L. BRUMBELOW NOTARY PUBLIC STATE OF IDAHO

Notary Public

State of Arizona

County of Maricopa

The foregoing instrument was acknowledged before me this 19th day of December, 2002 by SHEILA D. HARRIS, the DIRECTOR of the Governor's Office of Housing Development, its successors and/or assigns, an Arizona political subdivision corporation, on behalf of the corporation.

(Seal and Expiration Date)

OFFICIAL SEAL
CYNTHIA DIGGELMANN
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires Nov. 4, 2004

11-4-04

Commission Expires

Notary Public

Rev 07/29/02

ATTACHMENT I

LEGAL DESCRIPTION

PARCEL I:

Lots 1 to 26, inclusive, Block 6, VALLEY VIEW ADDITION, according to Book 3 of Maps, page 109, records of Cochise County, Arizona.

PARCEL II:

That certain alley located in Block 6, VALLEY VIEW ADDITION, as abandoned by Resolution No. 3-2000, according to Book 3 of Maps, page 109, records of Cochise County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of Lot 1, Block 6;
thence Westerly along the South line of Lots 1 through 13 to a point on the East right of way of Donald Avenue;
thence Southerly along the East right of way line of Donald Avenue to the Northwest corner of Lot 14;
thence Easterly along the North line of Lots 14 through 26 to a point on the West right of way line of Cholla Avenue;
thence North along the West right of way line of Cholla Avenue to the POINT OF BEGINNING.

PARCEL III:

That certain portion of 9th Street located in Block 6, VALLEY VIEW ADDITION, as abandoned by Resolution No. 14-2001 according to Book 3 of Maps, page 109, records of Cochise County, Arizona, more particularly described as follows:

BEGINNING at the Northwest corner of Block 6;
thence North 25.00 feet;
thence East parallel with the North line of Block 6, a distance of 400.00 feet to a point located 25.00 feet North of the Northeast corner of Block 6;
thence South 25.00 feet to the Northeast corner of Block 6,
thence West along the North line of Block 6, 400.00 feet to the POINT OF BEGINNING.

PARCEL IV:

That certain portion of Cholla Avenue located in Block 6, VALLEY VIEW ADDITION, as abandoned by Resolution No. 14-2001 according to Book 3 of Maps, page 109, records of Cochise County, Arizona, more particularly described as follows:

The West half of Cholla Avenue adjacent to the East line of Block 6.

ATTACHMENT II

PROJECT CHARACTERISTICS

Termination Date for Extended Use Period: December 31, 2032.

(a) State Preference Occupancy Restrictions:

Pursuant to the commitments made in the application submitted for the Project, the following occupancy restrictions must be satisfied for the Project not later than the close of the first year of the credit period for such Project. With respect to determining income and qualifying tenants for the State preference categories listed below, the Department will utilize the federal requirements and procedures applied in determining compliance with the "20/50" and "40/60" tests, e.g., the 140% rule and the Available Unit rule, provided however, the Available Unit rule for State preferences may be applied Project wide and is not restricted to each building. For purposes of Attachment II, income shall mean household income.

(i) At least Four (4) State Preference Residential Rental Units in the Project shall be occupied (or treated as occupied as provided herein) by individuals or families whose income is 20% or less of the area median gross income as determined in accordance with the Code (said tenants to be referred to herein, collectively, as "20% AMGI low-income tenants"). The determination of whether a individual or family is a 20% AMGI low-income tenant shall be made at least annually on the basis of the current certified income of such 20% AMGI low-income tenant(s) and the current year applicable income limit. Any State Preference Residential Rental Unit occupied by a individual or family who is a 20% AMGI low-income tenant at the commencement of occupancy shall continue to be treated as if occupied by a 20% AMGI low-income tenant so long as the qualifying tenant's income does not increase above 140% of the current year applicable income limit. For each qualifying tenant whose income subsequently exceeds 140% of the current year applicable income limit, such qualifying tenant's State Preference Residential Rental Unit will continue to be treated as if occupied by a 20% AMGI low-income tenant so long as during the period of noncompliance each available State Preference Residential Rental Unit of a comparable or smaller size is rented to a tenant who is a 20% AMGI low-income tenant. Once the percentage of State Preference Residential Rental Units in the Project (excluding the over-income units) equals the percentage of State Preference Residential Rental Units which are required to be rented pursuant to this agreement to 20% AMGI low-income tenants, failure to maintain the over-income units as low-income units has no significance.

(ii) In addition to any set-asides stated above, at least Four (4) State Preference Residential Rental Units in the Project shall be occupied (or treated as occupied as provided herein) by individuals or families whose income is 30% or less of the area median gross income as determined in accordance with the Code (said tenants to be referred to herein, collectively, as "30% AMGI low-income tenants"). The determination of whether a individual or family is a 30% AMGI low-income tenant shall be made at least annually on the basis of the current certified income of such 30% AMGI low-income tenant(s) and the current year applicable income limit. Any State Preference Residential Rental Unit occupied by a individual or family who is a 30% AMGI low-income tenant at the commencement of occupancy shall continue to be treated as if occupied by a 30% AMGI low-income tenant so long as the qualifying tenant's income does not increase above 140% of the current year applicable income limit. For each qualifying tenant whose income subsequently exceeds 140% of the current year applicable income limit, such

qualifying tenant's State Preference Residential Rental Unit will continue to be treated as if occupied by a 30% AMGI low-income tenant so long during the period of noncompliance each available State Preference Residential Rental Unit of a comparable or smaller size is rented to a tenant who is a 30% AMGI low-income tenant. Once the percentage of State Preference Residential Rental Units in the Project (excluding the over-income units) equals the percentage of State Preference Residential Rental Units which are required to be rented pursuant to this agreement to 30% AMGI low-income tenants, failure to maintain the over-income units as low-income units has no significance.

(iii) In addition to any set-asides stated above, at least Zero (0) State Preference Residential Rental Units in the Project shall be occupied (or treated as occupied as provided herein) by individuals or families whose income is 40% or less of the area median gross income as determined in accordance with the Code (said tenants to be referred to herein, collectively, as "40% AMGI low-income tenants"). The determination of whether a individual or family is a 40% AMGI low-income tenant shall be made at least annually on the basis of the current certified income of such 40% AMGI low-income tenant(s) and the current year applicable income limit. Any State Preference Residential Rental Unit occupied by a individual or family who is a 40% AMGI low-income tenant at the commencement of occupancy shall continue to be treated as if occupied by a 40% AMGI low-income tenant so long as the qualifying tenant's income does not increase above 140% of the current year applicable income limit. For each qualifying tenant whose income subsequently exceeds 140% of the current year applicable income limit, such qualifying tenant's State Preference Residential Rental Unit will continue to be treated as if occupied by a 40% AMGI low-income tenant so long as during the period of noncompliance each available State Preference Residential Rental Unit of a comparable or smaller size is rented to a tenant who is a 40% AMGI low-income tenant. Once the percentage of State Preference Residential Rental Units in the project (excluding the over-income units) equals the percentage of State Preference Residential Rental Units which are required to be rented pursuant to this agreement to 40% AMGI low-income tenants, failure to maintain the over-income units as low-income units has no significance.

(iv) In addition to any set-asides stated above, at least Twenty-Four (24) State Preference Residential Rental Units in the Project shall be occupied (or treated as occupied as provided herein) by individuals or families whose income is 50% or less of the area median gross income as determined in accordance with the Code (said tenants to be referred to herein, collectively, as "50% AMGI low-income tenants"). The determination of whether a individual or family is a 50% AMGI low-income tenant shall be made at least annually on the basis of the current certified income of such 50% AMGI low-income tenant(s) and the current year applicable income limit. Any State Preference Residential Rental Unit occupied by a individual or family who is a 50% AMGI low-income tenant at the commencement of occupancy shall continue to be treated as if occupied by a 50% AMGI low-income tenant so long as the qualifying tenant's income does not increase above 140% of the current year applicable income limit. For each qualifying tenant whose income subsequently exceeds 140% of the current year applicable income limit, such qualifying tenant's State Preference Residential Rental Unit will continue to be treated as if occupied by a 50% AMGI low-income tenant so long as during the period of noncompliance each available State Preference Residential Rental Unit of a comparable or smaller size is rented to a tenant who is a 50% AMGI low-income tenant. Once the percentage of State Preference Residential Rental Units in the Project (excluding the over-income units) equals the percentage of State Preference Residential Rental Units which are required to be rented pursuant to this agreement to 50% AMGI low-income tenants, failure to maintain the over-income units as low-income units has no significance.

(b) Federal Law Occupancy Restrictions:

Pursuant to the requirements of the Federal law, the following occupancy restrictions must be satisfied for each building in the Project not later than the close of the first year of the credit period for such building as determined pursuant to Section 42(f)(1) of the Code.

(i) In addition to any set-asides stated above, at least Zero (0) Low-Income Residential Rental Units in each participating building of the Project shall be occupied (or treated as occupied as provided herein) by individuals or families whose income is 50% or less of the area median gross income as determined in accordance with the Code (said tenants to be referred to herein, collectively, as " 50% AMGI low-income tenants"). The determination of whether a individual or family is a 50% AMGI low-income tenant shall be made at least annually on the basis of the current certified income of such 50% AMGI low-income tenant(s) and the initial applicable income limit. Any Low-Income Residential Rental Unit occupied by a individual or family who is a 50% AMGI low-income tenant at the commencement of occupancy shall continue to be treated as if occupied by a 50% AMGI low-income tenant so long as the qualifying tenant's income does not increase above 140% of the initial applicable income limit. For each qualifying tenant whose income subsequently exceeds 140% of the initial applicable income limit, such qualifying tenant's Low-Income Residential Rental Unit will continue to be treated as if occupied by a 50% AMGI low-income tenant so long as during the period of noncompliance each available Low-Income Residential Rental Unit of a comparable or smaller size is rented to a tenant who is a 50% AMGI low-income tenant. Once the percentage of Low-Income Residential Rental Units in each building of the Project (excluding the over-income units) equals the percentage of Low-Income Residential Rental Units which are required to be rented pursuant to this agreement to 50% AMGI low-income tenants, failure to maintain the over-income units as low-income units has no significance

(ii) In addition to any set-asides stated above, all the remaining Low-Income Residential Rental Units (i.e., Seven (7) units in the event there is a unit occupied by a manager of the Project, otherwise Eight (8) units) in each participating building of the Project shall be occupied (or treated as occupied as provided herein) by individuals or families whose income is 60% or less of the area median gross income as determined in accordance with the Code (said tenants to be referred to herein, collectively, as "60% AMGI low-income tenants"). The determination of whether a individual or family is a 60% AMGI low-income tenant shall be made at least annually on the basis of the current certified income of such 60% AMGI low-income tenant(s) and the initial applicable income limit. Any Low-Income Residential Rental Unit occupied by a individual or family who is a 60% AMGI low-income tenant at the commencement of occupancy shall continue to be treated as if occupied by a 60% AMGI low-income tenant so long as the qualifying tenant's income does not increase above 140% of the initial applicable income limit. For each qualifying tenant whose income subsequently exceeds 140% of the initial applicable income limit, such qualifying tenant's Low-Income Residential Rental Unit will continue to be treated as if occupied by a 60% AMGI low-income tenant so long as during the period of noncompliance each available Low-Income Residential Rental Unit of a comparable or smaller size is rented to a tenant who is a 60% AMGI low-income tenant. Once the percentage of Low-Income Residential Rental Units in each building of the Project (excluding the over-income units) equals the percentage of Low-Income Residential Rental Units which are required to be rented pursuant to this agreement to 60% AMGI low-income tenants, failure to maintain the over-income units as low-income units has no significance.

(c) Over-income units may be converted to market rate units without violating the Available Unit Rule if there are enough Residential Rental Units such that the over-income units are not needed to meet the total low-income units for which the total credit for the building are based.

(d) As a condition to occupancy, each person who is intended to be a low-income tenant shall be required to sign and deliver to the Owner a Resident Certification Form in the form of Exhibit E of the Compliance Manual. In addition, such person shall be required to provide whatever other information, documentation or certifications deemed necessary by the Department to substantiate the income certification.

(e) The form of lease to be utilized by the Owner in renting any Residential Rental Units in the Project to any person who is intended to be a low-income tenant shall provide for immediate termination of the lease and eviction in accordance with Arizona Revised Statues for failure to qualify as a low-income tenant as a result of any material misrepresentation made by such person with respect to the income certification, or any material misrepresentation made in conjunction with execution of the lease or the failure by such tenant to execute an income certification at least annually.

(f) Income certifications shall be maintained on file at the Project with respect to each low-income tenant who resides in a Low Income Unit or resided therein during the immediately preceding calendar year, and the Owner will, promptly upon receipt, file a copy thereof with the Department if so requested by the Department.

(g) At least Zero (0)% of the Low Income Residential Rental Units of the Project shall be occupied (or treated as occupied) by individuals or individuals or families, where at least one member of the individual or family meets one or more of the following criteria (enter number of Residential Rental Units after each):

(i) Homeless persons or families (Zero (0) Residential Rental Units);

(ii) Victims of Alzheimer's Disease and similar diseases which render their victims incapable of independent living (Zero (0) Residential Rental Units);

(iii) Seriously Mentally Ill Persons, *i.e.*, adults whose emotional or behavioral functioning is so impaired as to interfere with their capacity to remain in the community without supportive treatment. The mental impairment is severe and persistent and may result in a limitation of their functional capacities for primary activities of daily living, interpersonal relationships, homemaking, self-care, employment or recreation. The mental impairment may limit their ability to seek or receive local, state or federal assistance such as housing, medical and dental care, rehabilitation services, income assistance, or protective services (Zero (0) Residential Rental Units);

(iv) Seriously Emotionally Disturbed, *i.e.*, persons between birth and age 18 who currently or at any time during the past year have had a diagnosable mental, behavioral, or emotional disorder that resulted in a functional impairment which substantially interferes with or limits the person's role or functioning in family, school, or community activities. Seriously emotionally disturbed persons are to be certified by a referral agency recognized by the Department. (Zero (0) Residential Rental Units);

(v) Developmentally Disabled Persons suffering from a severe, chronic condition attributable to a physical or mental impairment manifesting itself before the age of 22 and likely to continue indefinitely. Developmentally Disabled Persons are to be certified by a referral agency recognized by the Department. (Zero (0) Residential Rental Units);

(vi) Victims of AIDS/HIV, as certified by a licensed M.D. (Zero (0) Residential Rental Units)

(vii) Victims of domestic violence, as certified by referral agency recognized by the Department (Zero (0) Residential Rental Units).

(viii) Victims of chronic substance abuse, as certified by a referral agency recognized by the Department (Zero (0) Residential Rental Units)

(h) At least One Hundred (100%) of the Low Income Residential Rental Units of the Project shall be occupied (or treated as occupied) by individuals or families, where at least one individual in each unit will be 55 years of age or older.

Management Units. The Owner acknowledges that the Project will contain Forty (40) residential units, of which Zero (0) are management units included in the common area, leaving Forty (40) rent-commanding units. Of the Forty (40) rent-commanding units, Zero (0) are to be rented at market rates and Forty (40) at restricted, low-income rents.

Amenities and Design Features: The Owner acknowledges that the following amenities and design features will be included in the Project upon completion of construction:

Agreed upon Amenities for the project will be as follows:
Community Room; BBQ Area; Common Laundry Area; Picnic Area; Tenant Services.

Agreed upon Design Features specifically installed in the project include:
Range; Refrigerator; Dishwasher; Air Conditioner; Kitchen Exhaust Fan; Washer/Drver Hook-Ups; Patios; Storage.

ATTACHMENT III

When recorded return to:

Arizona Department of Housing
Attn: Rental Housing Program Manager
3800 North Central Avenue, Suite 1200
Phoenix, Arizona 85012

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 _____, 2000 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 _____

It's_____

State of Arizona

County of Maricopa

The foregoing instrument was acknowledged before me this _____day of _____, 200_, by_____, the _____ of Governor's Office of Housing Development, 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

ATTACHMENT IV

RELEASE AND INDEMNIFICATION

The undersigned Federal Low Income Housing Tax Credit applicant acknowledges, covenants and agrees that it has not relied upon or sought any information from the Governor's Office of Housing Development, its successors and/or assigns, its agents, counsel or employees in conjunction with the application for, issuance of and reporting to the federal government of an allocation of low income housing tax credits. In conjunction with the undersigned's application and allocation of tax credits, the undersigned acknowledges and agrees that it shall hereby release the Department, its agents, counsel and employees from any claim, loss, demand or judgment as a result of allocation of federal low income housing tax credit dollars to the Project or the recapture of tax credit dollars by the Internal Revenue Service to include any interest and penalties thereon; and the undersigned does hereby further agree for itself, its successors and assigns to indemnify the Department, its agents, counsel and employees from any claim, loss, demand or judgment, to include reasonable attorney's fees as a result of allocation of tax credit dollars by the Department in the event of an assessment and deficiency determination or otherwise by the Internal Revenue Service.

DATED: December 5, 2002

OWNER: Villa Del Sol of Benson Limited Partnership
by: Homestead Hope, LLC a General Partner

By _____

Title Manager

STATE OF Idaho

COUNTY OF Ada

The foregoing was acknowledged before me by Julie Hyatt, this 6th day of December, 2002.

KATHY BRUMBELOW NOTARY PUBLIC STATE OF IDAHO

Notary Public

My Commission Expires 10/29/04

Rev 07/29/02

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ATTACHMENT V

REQUIRED PROVISION FOR TRIBAL LEASE AGREEMENT

Notwithstanding anything to the contrary contained herein, should there be any conflict between the terms of this Lease and the Declaration of Affirmative Land Use and Restrictive Covenant Agreement between the Lessee and the Governor's Office of Housing Development dated _____ __, 200__, the terms of such Declaration of Affirmative Land Use and Restrictive Covenant Agreement ("Declaration") shall control. The terms of this Lease are unconditionally subordinated at all times and under all circumstances to the Declaration. Further, the Lessor unconditionally agrees to any amendments to such Declaration of Affirmative Land Use and Restrictive Covenant Agreement to correct factual errors or as are necessary to comply with the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder which are now, or may in the future be, effective.

ATTACHMENT VI

Compliance Certification

Homestead Hope, LLC & CDP Holdings, LLC (the "Developer") does hereby certify to the following:

A) The Federal Tax ID Number for Villa Del Sol of Benson Limited Partnership (the "Project Owner") is: 82-0533068.

B) The Project, Villa Del Sol, is in full compliance with Section 42 of the Code and the Regulations, and the Project shall continue to comply with Section 42 of the Code and the Regulations during the compliance period as required by the Code; that the information supplied in the Application is and will continue to be true and correct as of the time of allocation of tax credit dollars; and that no ownership change will occur in the "Developer"/"Project Owner" without the prior written consent of the Department.

C) The Project is in full compliance minimizing the involuntary displacement of low-income households, and that the Project is available for occupancy by all persons regardless of race, national origin, religion, creed, sex, age or handicap.

D) The date the Project was "placed in service" is _____.

Homestead Hope, LLC
General Partner

Date: _____

By: _____

Title: Manager

State of:
County of:

The foregoing instrument was acknowledged before me this ___ day of _____, 200_ by Julie Hyatt, the Manager of Homestead Hope LLC an Limited Liability corporation, on behalf of the corporation.

(Seal and Expiration Date) 10/29/04

KATHY BRUMBELOW NOTARY PUBLIC STATE OF IDAHO

_____
Notary Public

021241042

Exhibit B

Villa del Sol 123-43-006 et al				
Tax Year	**2012**	**2011**	**2010**	**2009**
Rental Income	$ 189,257	$ 176,044	$ 179,030	$ 172,294
Other Income	$ 4,754	$ 2,097	$ 7,892	$ 16,068
Gross Operating Income	**$ 194,011**	**$ 178,141**	**$ 186,922**	**$ 188,362**
Management Fees	$ 9,403	$ 8,863	$ 9,028	$ 8,585
Admin. Expense	$ 5,941	$ 11,532	$ 6,839	$ 4,841
Professional Fees	$ 5,550	$ 5,850	$ 4,363	$ 4,931
Property Insurance	$ 9,478	$ 8,152	$ 11,115	$ 11,427
Repairs and Maintenance	$ 31,470	$ 37,428	$ 31,341	$ 33,835
Salaries and Related Taxes and Insurance	$ 16,366	$ 20,741	$ 23,512	$ 23,180
Utilities	$ 16,292	$ 19,131	$ 21,079	$ 24,203
Reserves for Replacements*	$ 8,000	$ 8,000	$ 8,000	$ 8,000
Operating Expenses	**$ 102,500**	**$ 119,697**	**$ 115,277**	**$ 119,002**
Net Operating Income	**$ 91,511**	**$ 58,444**	**$ 71,645**	**$ 69,360**
Capitalization Rate	**13.77%**	**13.64%**	**13.58%**	**13.39%**
Base Rate	8.85%	8.77%	8.81%	8.62%
LIHTC Adjustment	3.00%	3.00%	3.00%	3.00%
Class and Age Adjustment	1.00%	1.00%	1.00%	1.00%
Eff. Tax Rate	0.92%	0.87%	0.77%	0.77%
Corrected Value	**$ 664,664**	**$ 428,601**	**$ 527,616**	**$ 518,037**

*$200/unit X 40 units