

WHEN RECORDED UPLOAD ELECTRONIC COPY TO:

Arizona Department of Housing  
1110 W. Washington, Suite 280  
Phoenix, AZ 85007

**CONSENT AND SUBORDINATION AGREEMENT**

THIS CONSENT AND SUBORDINATION AGREEMENT ("Agreement"), effective as of the date of recording, by and between City of Flagstaff, Arizona, a municipal ~~subdivision~~ corporation of the State of Arizona, 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 is acknowledged to by The Villas on Lake Mary, LLC, an Ohio limited liability company ("Owner").

**RECITALS**

- A. The Department has been designated by the State of Arizona pursuant to Arizona Revised Statute Section 41-3953 *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 holds a fee interest in a 76-unit residential rental housing project located on lands within the City of Flagstaff, County of Coconino, State of Arizona as more fully described in Exhibit A attached hereto and incorporated herein (the "Project");
- C. In connection with the Owner's acquisition of its interest in the Project, the Lender made a loan in the original principal amount of \$397,398.00 to Owner (the "Loan"). The Loan is evidenced by that certain promissory note in the original principal amount of \$397,398.00 made by the Owner to the order of the Lender (the "Note");
- 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 (With Assignment of Rents and Security Agreement) dated and recorded as of substantially even date herewith (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 effective as of the day of recording and recorded in the official records of the State of Arizona, County of Coconino Recorder's Office, Instrument No. 3964745 (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.

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.

[SIGNATURES AND ACKNOWLEDGEMENTS ON THE FOLLOWING PAGES]



**DEPARTMENT:**

State of Arizona, Arizona Department of Housing,  
a constituent department and an agency of the State of Arizona

By: \_\_\_\_\_  
Joan Serviss, Cabinet Executive Officer, Executive Deputy Director  
or Ruby Dhillon-Williams, Deputy Director  
or Keon Montgomery, Assistant Deputy Director/Housing & Community Development

State of Arizona                    )  
  ) ss.  
County of Maricopa                )

On this the \_\_\_\_\_ day of \_\_\_\_\_ 2024, acknowledged before me, a Notary Public, by means of communication technology or personally appeared \_\_\_\_\_, the \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to this instrument titled Consent and Subordination Agreement and acknowledged that s/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.

\_\_\_\_\_  
Notary Expiration Date

\_\_\_\_\_  
Signature of the Notary Public for Department

[STAMP/SEAL]

ACKNOWLEDGED:

**OWNER:**

THE VILLAS ON LAKE MARY, LLC,  
an Ohio limited liability company

By: HSDP The Villas on Lake Mary, LLC,  
an Ohio limited liability company, its Managing Member

By: \_\_\_\_\_  
Matthew A. Shoemaker, Manager

State of Ohio                    )  
  ) ss.  
County of Franklin            )

On this the \_\_\_\_\_ day of \_\_\_\_\_ 2024, before me, a Notary Public, personally appeared Matthew A. Shoemaker, the Manager of HSDP The Villas on Lake Mary, LLC, an Ohio limited liability company, as Managing Member of The Villas on Lake Mary, LLC, an Ohio limited liability company, known to me or satisfactorily proven to be the person whose name is subscribed to this instrument titled Consent and Subordination Agreement and acknowledged that s/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. This is an acknowledgment clause; no oath or affirmation was administered to the signor.

\_\_\_\_\_  
Notary Expiration Date

\_\_\_\_\_  
Signature of the Notary Public for Owner

[STAMP/SEAL]

**EXHIBIT A**

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF COCONINO, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

A portion of Tract A, BOW AND ARROW ACRES, according to Book 2 of Maps, page 69, records of Coconino County, Arizona, located in the Northwest quarter of Section 33, Township 21 North, Range 7 East of the Gila and Salt River Base and Meridian, City of Flagstaff, Coconino County, Arizona, described as follows:

For reference, begin at the Southeast corner of Lot 11, of said Bow and Arrow Acres, a 1" pipe;

Thence North 69°42'02" West along the South line of said Lot 11, 110.09 feet (NORTH 70°07'59" WEST, 110.18 FEET MEASURED) to the Northwest corner of said Lot 11, a 1" pipe, said point being the POINT OF BEGINNING;

Thence South 64°35'26" West 11.30 feet (SOUTH 63°35'39" WEST 11.24 FEET MEASURED);

Thence South 24°29'00" East 85.78 feet (SOUTH 24°50'17" EAST 85.78 FEET MEASURED);

Thence South 65°31'00" West 197.77 feet (SOUTH 65°08'15" WEST 197.79 FEET MEASURED);

Thence North 24°29'00" West 843.80 feet (NORTH 24°50'39" WEST 843.63 FEET MEASURED) to the beginning of a curve to the right, having a radius of 18.97 feet (18.98 FEET MEASURED), a central angle of 53°28'35" (53°29'47" MEASURED) and a chord bearing of North 64°02'05" East;

Thence run along the arc of said curve 17.70 feet (17.72 FEET MEASURED);

Thence South 88°55'11" East along the South right of way of Mohawk Drive 254.66 feet (SOUTH 89°27'07" EAST, 253.49 FEET MEASURED) to the beginning of a curve to the right, having a radius of 228.08 feet (203.08 FEET MEASURED), a central angle of 18°45'28" (21°19'33" MEASURED) and a chord bearing of South 78°34'40" East;

Thence run along the arc of said curve 74.67 feet (75.59 FEET MEASURED);

Thence South 21°56'34" West along the West line of Lot 1 of said Bow And Arrow Acres 109.01 feet (SOUTH 21°56'34" WEST, 108.99 FEET MEASURED) to the Southwest corner of said Lot 1;

Thence South 59°55'44" East along the South line of Lots 1-5 of said Bow And Arrow Acres 364.81 feet (SOUTH 60°18'25" EAST, 365.00 FEET MEASURED) to the Southeast corner of said Lot 5;

Thence South 20°16'38" West along the Northwest line of Lots 7-11 of said Bow And Arrow Acres 327.39 feet (SOUTH 19°54'35" WEST, 327.50 FEET MEASURED) back to the POINT OF BEGINNING.

Excepting therefrom the following described parcel:

A portion of that parcel of land as described in Instrument Number 3944741, Official Records of Coconino County (herein referred to as R1), located in the northwest quarter of Section 33, Township 21 North, Range 7 East of the Gila and Salt River Meridian, Coconino County, Arizona described as follows:

Commencing at a calculated point at the northwest corner of said parcel, said point being in common with the easterly Right-of-Way line of South Lake Mary Road, and the TRUE POINT OF BEGINNING;

Thence along the westerly line of said parcel, and along said Right-of-Way line, South 24°50'39" East, 843.63 feet (Basis of Bearing, South 24°29'00" East, 843.80 feet per R1) to a found capped rebar marked 'RLS 23380' at the southwest corner of said parcel;

Thence leaving said Right-of-Way line, and along the southerly line of said parcel, North 65°08'15" East, 4.00 feet;

Thence North 24°50'39" West, 556.52 feet;

Thence North 14°56'49" West, 69.81 feet;

Thence North 24°50'39" West, 195.40 feet;

Thence North 32°51'07" East, 16.03 feet;

Thence South 89°27'07" East, 235.89 feet to the beginning of a non-tangent curve concave to the south, having a radius of 195.08 feet, and being subtended by a chord which bears South 78°47'02" East, 72.23 feet;

Thence easterly along said curve, 72.65 feet through a central angle of 21°20'12" to a point on the easterly line of said parcel, said point being in common with the westerly line of Lot 1, Bow and Arrow Acres according to Book 2 of Maps, Page 69, Official Records of Coconino County;

Thence along said westerly line, North 21°36'15" East, 8.00 feet to a point on the southerly Right-of-Way line of East Mohawk Drive and the beginning of a non-tangent curve concave to the south, having a radius of 203.08 feet, and being subtended by a chord which bears North 78°47'22" West, 75.15 feet;

Thence westerly along said curve, and along said Right-of-Way line, 75.59 feet through a central angle of 21°19'33";

Thence continuing along said Right-of-Way line, North 89°27'07" West, 253.49 feet to the beginning of a non-tangent curve concave to the south, having a radius of 18.98 feet, and being subtended by a chord which bears South 63°48'00" West, 17.08 feet;

Thence continuing along said Right-of-Way line, and westerly along said curve, 17.72 feet through a central angle of 53°29'47" to the TRUE POINT OF BEGINNING.

Containing 9,150 square feet, or 0.21 acres, more or less.

APN: 105-03-026B