

Amendment 315-¹¹²/₁₁₈

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BOOK 311

RECORDED AT REQUEST OF
First Financial Title

When Recorded Return to:
Randy Archuleta
Utah Housing Finance Agency
177 East 100 South
Salt Lake City, Utah 84111

038151

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1-99-28
1-99-8

DONNA S. MCKENDRICK
TOBELE COUNTY RECORDER
DEPUTY MW 11/17/90

LOW-INCOME HOUSING CREDIT COMMITMENT AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS

This Low-Income Housing Credit Commitment Agreement and Declaration of Restrictive Covenants (the "Agreement") is made this 20th day of NOVEMBER, 1990, by and between Willow Creek Apartments, a Utah Limited Partnership, its successors and assigns (the "Owner"), and the Utah Housing Finance Agency ("UHFA"), a body politic and corporate of the State of Utah.

RECITALS:

WHEREAS, section 42 of the Internal Revenue Code of 1986, as amended (the "Code"), provides for the allocation of low-income housing credits to taxpayers who construct or rehabilitate a qualified low-income housing project;

WHEREAS, UHFA is the housing credit agency which has been designated by the Governor of the State of Utah as the agency responsible for the allocation of low-income housing credits for the State of Utah;

WHEREAS, Owner has made application, which application is hereby incorporated herein by this reference, to UHFA for the allocation of low-income housing credits with respect to the construction or rehabilitation of that certain qualified low-income building or buildings located upon and being a part of the real

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property described in Exhibit "A" attached hereto and incorporated herein by this reference (herein the "Project");

WHEREAS, Owner represents that the Project satisfies the requirements of section 42 of the Code as a qualified low-income housing project and Owner represents it will maintain the Project in conformity and continuous compliance with section 42 of the Code and applicable regulations thereunder, any other federal or state requirements applicable thereto and this Agreement;

WHEREAS, UHFA has relied on the information submitted by Owner in its application with respect to the Project in reserving low-income housing credits to the Owner; and

WHEREAS, UHFA is unwilling to allocate any low-income housing credits to Owner for the Project unless Owner shall, by entering into and pursuant to this Agreement, consent and agree to the conditions and restrictions set forth herein and make a declaration of restrictive covenants with respect to the Project as set forth herein; and

WHEREAS, Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the land for the term stated herein and binding upon all subsequent owners of the Project for such term set forth herein, and are not merely personal covenants of the Owner.

NOW THEREFORE, in consideration of the mutual premises set forth above, and based upon the mutual covenants and promises hereinafter set forth, and such other valuable consideration the receipt and sufficiency of which is hereby acknowledged, Owner and UHFA agree as follows:

1. Owner agrees that the applicable fraction, as defined in section 42(c)(1) of the Code, for the Project for each taxable year in the compliance period and the extended use period, as said terms are defined in section 42 of the Code, will not be less than 100%.

2. Owner agrees that for each taxable year in the compliance period and the extended use period, as said terms are defined in section 42 of the Code, 100% of the residential units in the Project shall be both rent restricted, as defined in section 42 of the Code, and occupied by individuals (hereinafter "low-income tenants") whose income is 50% or less of the area median gross income.

3. Owner agrees to not take or permit to be taken any action which would have the effect or result, directly or indirectly, of subjecting the Project to non-compliance with section 42 of the Code, the regulations issued thereunder, any other state or federal requirements or any provisions of this Agreement. If the Owner becomes aware of any incidence or manner in which the Project does not comply with section 42 of the Code or this Agreement, the Owner shall notify UHFA within 30 days after the date Owner becomes aware of such non-compliance. The UHFA

shall notify the Internal Revenue Service of any non-compliance of which UHFA becomes aware.

4. Owner agrees to ensure that the units occupied by low-income tenants are of comparable quality to all other units in the Project.

5. Owner represents and warrants, upon execution and delivery of this Agreement, that it has good and marketable title to the Project, free and clear of liens and encumbrances, except for those liens and encumbrances which secure financing for the acquisition, construction or rehabilitation of the Project, property taxes, and customary non-monetary liens and encumbrances relating to easements, utilities, and similar matters.

6. Owner agrees to release and hold harmless UHFA from any claim, loss, liability, demand or judgment incurred by or asserted against Owner resulting from or relating to the allocation of low-income housing credits or the recapture thereof by the Internal Revenue Service. Further, Owner agrees to indemnify and hold UHFA harmless from any claim, loss, liability, demand or judgment incurred by or asserted against UHFA as a result of or in any way related to the allocation to Owner of low-income housing credits or the recapture thereof.

7. Owner shall permit, during normal business hours, upon reasonable notice, any duly authorized representative of UHFA to inspect any books and records of Owner relating to the Project and the incomes of qualifying low-income tenants.

8. Owner and UHFA agree that the extended use period, as used in section 42 of the Code and this Agreement, means the period beginning on the first day in the compliance period, as defined in section 42 of the Code, on which a qualified low-income building is a part of a qualified low-income housing project and ending on the date which is 15 [minimum of 15] years after the close of the compliance period; however, notwithstanding the foregoing to the contrary, the extended use period shall terminate upon the occurrence of either of the following:

(a) On the date the qualified low-income building is acquired by foreclosure (or instrument in lieu of foreclosure); or

(b) One year from the date Owner submits a written request to UHFA to find a person ("qualified buyer") to acquire the Owner's interest in the low-income portion of the qualified low-income building, PROVIDED THAT (i) UHFA is unable to present during such one year period a qualified contract, as defined in section 42(h)(6)(F) of the Code, as amended, for the acquisition of the low-income portion of the qualified low-income building by any person who will continue to operate such portion as a qualified low-income building, and (ii) Owner shall not request that UHFA find a qualified buyer, and Owner hereby waives its right to do so for purposes of this paragraph 8(b) and section 42 of the Code, until the expiration of 30 years from the date the qualified low-income building is placed in service.

9. Notwithstanding the termination of the extended use period pursuant to the provisions of paragraph 8(a) or (b) above, Owner shall not evict or terminate the tenancy (other than for good cause) of an existing low-income tenant of any low-income unit of the Project or increase the gross rent with

respect to a low-income unit, not otherwise permitted under section 42 of the Code, before the close of the three year period following the termination of the extended use period under the provisions of paragraph 8(a) or (b).

10. The Owner covenants to obtain the agreement of any prior recorded lienholder on the Project to subordinate its lien priority to the terms of this Agreement, and thereby agrees to not evict an existing low-income tenant (other than for cause) and not increase gross rent with respect to a low-income unit, not otherwise permitted under section 42 of the Code, for a period of three years from the date of foreclosure, and such subordination shall be a condition precedent to the issuance of Internal Revenue Service Form 8609 constituting final allocation of low-income housing credits.

11. The Owner intends, declares and covenants that the covenants, terms, provisions and restrictions set forth in this Agreement shall run with the land and shall bind, and the benefits and burdens shall inure to, Owner and UHFA, and their respective successors and assigns, and all subsequent owners of the Project or any interest therein, for the duration of the extended use period set forth in paragraph 8 above. Upon the termination of the extended use period, except as provided in paragraph 9 above, this Agreement shall be deemed terminated and of no further force and effect, and UHFA shall execute a release for recordation purposes if so requested by the then owner of the Project.

12. This Agreement shall be placed of record in the real property records of the County in which the Project is located, and upon recording, the Owner shall cause to be sent to UHFA an executed original of the recorded Agreement showing the date, deed book and page numbers of record. The Owner agrees that UHFA may issue, but withhold delivery of, the Internal Revenue Service Form 8609 constituting final allocation of low-income housing credits until UHFA receives the recorded executed original of the Agreement.

13. All of the terms, provisions and restrictions of the Agreement may be enforced by UHFA. In addition, UHFA and Owner acknowledge and agree that any individual who meets the income limitation applicable to the Project under section 42(g) of the Code (whether a prospective, present, or former occupant of the Project) has the right to enforce in any Utah state court the requirements and conditions of this Agreement.

14. Owner and UHFA agree that this Agreement may be amended as necessary to reflect changes in the law governing the allocation of low-income housing credits. Thus, Owner agrees to enter into any such amendments which, in the opinion of UHFA, are necessary to maintain the Project in compliance with section 42 of the Code, as amended. This Agreement shall be amended only by written instrument executed by the parties hereto.

15. All notices to be given pursuant to this Agreement shall be in writing and shall be mailed, by first class, postage prepaid, to the parties at the addresses set forth below:

to UHFA:	Utah Housing Finance Agency 177 East 100 South Salt Lake City, Utah 84111
to the Owner:	David E. Jones Willow Creek Apartments, AULP 236 West Plum Street Grantsville, Utah 84029
to the IRS:	District Director Internal Revenue Service P.O. Box 2196 Stop 1000 SLC Salt Lake City, Utah 84110

16. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, and where applicable, the laws of the United States of America. The invalidity of any paragraph, part or provision of this Agreement, shall not affect the validity of the remaining portions hereof.

17. The Owner shall, in a form similar to that set forth in Exhibit "B" attached hereto, annually certify to UHFA its compliance with all the provisions of this Agreement and section 42 of the Code and regulations issued thereunder.

18. All words, definitions and terms used in this Agreement that are defined or set forth in section 42 of the Code shall have the meanings given in said section 42 of the Code.

19. This Agreement may be executed by the different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original, and all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized representatives.

OWNER:

WILLOW CREEK APARTMENTS, AULP

David E. Jones

By: David E. Jones, President
GRANTSVILLE, INC.

Its General Partner

UHFA:

UTAH HOUSING FINANCE AGENCY

William H. Erickson

By William H. Erickson

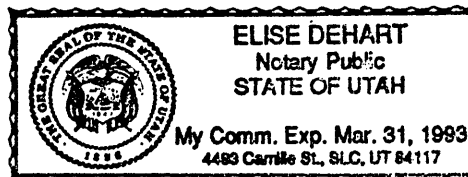
Executive Director

STATE OF UTAH)
) : ss.
COUNTY OF S.L.)

On this 20th day of NOVEMBER, 1990, personally appeared before me David E. Jones, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the President of Grantsville, Inc., and that the foregoing document was signed by him in behalf of Grantsville, Inc. by authority of a resolution of its board of directors, and said David E. Jones acknowledged to me that said corporation executed the same.

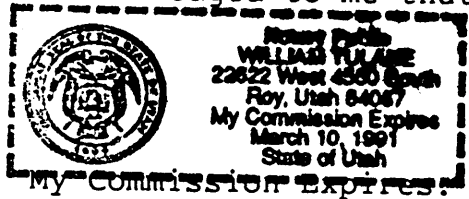
Elise DeHart
NOTARY PUBLIC
Residing at: 4493 Camille

My Commission Expires:
3-31-93



STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 21 day of NOVEMBER, 1990, personally appeared before me William H. Erickson, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the Executive Director of the Utah Housing Finance Agency, and that the foregoing document was signed by him in behalf of the Utah Housing Finance Agency by authority of a resolution of its board of directors, and said William H. Erickson acknowledged to me that said corporation executed the same.



William H. Erickson
NOTARY PUBLIC
Residing at: Roy Utah

284:100190A

EXHIBIT A

County of Tooele, State of Utah:

Lot 6, Block 21, Plat "A" Grantsville City
Survey, Grantsville City.