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BOOK 324

RECORDED AT REQUEST OF First Financial Title

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Randy Archuleta  
Utah Housing Finance Agency  
177 East 100 South  
Salt Lake City, Utah 84111

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DONNA S. MCKENDRICK  
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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 31st day of October, 1991, by and between Willow Creek Apartments V Ltd., a Utah limited partnership (also known as Willow Creek Apartments #5, a Utah limited partnership), its successors and assigns (the "Owner"), and 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

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building or buildings located upon and being a part of the real 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 amended, 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, as the same may hereafter be amended, 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;

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 60% 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 acknowledges that UHFA, or its delegate, is required to monitor the Project's compliance with the requirements of section 42 of the Code and the covenants of this Agreement. Accordingly, Owner agrees to request and obtain, each year, from low-income tenants, sufficient documentation to

substantiate the income earned by all low-income tenants residing within a low-income unit of the Project. As a condition to leasing a low-income unit, a low-income tenant shall be required to provide sufficient documentation to substantiate income levels of all individuals residing therein.

8. 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 low-income tenants. Specifically, Owner shall make available to UHFA the documentation substantiating incomes of low-income tenants. The UHFA shall notify the Internal Revenue Service ("IRS") of any non-compliance with the provisions of section 42 of the Code, or of this Agreement, with which it becomes aware.

9. 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 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), unless the IRS determines that such acquisition is part of an arrangement of the taxpayer a purpose of which is to terminate the extended use period; 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, who will continue to operate such portion as a 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, 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 9(b) and section 42 of the Code, until the expiration of 24 years from the date the qualified low-income building is placed in service.

10. Notwithstanding the termination of the extended use period pursuant to the provisions of paragraph 9(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 9(a) or (b).

11. Pursuant to Section 42(h)(6)(B)(iii) of the Code, no portion of a qualified low-income housing building to which this Agreement applies, may be sold, transferred or conveyed to any person unless all of the low-income housing building to which this Agreement applies is sold, transferred or conveyed to such person.

12. The Owner covenants to obtain the agreement of any prior recorded lienholder on the Project to subordinate its lien

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priority to the terms of this Agreement, and the prior recorded lienholder 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 any foreclosure.

13. 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 9 above. Upon the termination of the extended use period, except as provided in paragraph 10 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.

14. 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

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housing credits until UHFA receives the recorded executed original of the Agreement.

15. 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 limitations 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.

16. UHFA and Owner recognize that the provisions of section 42 of the Code may be amended from time to time. Owner agrees to maintain the Project in compliance and conformity with the requirements of section 42 of the Code, and the regulations issued thereunder, as the same are amended from time to time. However, if in the opinion of UHFA subsequent revisions to section 42 of the Code are so substantial as to necessitate amendment of this Agreement, this Agreement may be amended to reflect such changes in the law governing the low-income housing tax credit program. In such case, this Agreement shall be amended only by written instrument executed by the parties hereto.

17. 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



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to the Owner: David Jones  
Willow Creek Apartment V Ltd.  
8184 So. Highland Dr. C-4  
Sandy, UT 84093

to the IRS: District Director  
Internal Revenue Service  
P.O. Box 2196  
Stop 1000 SLC  
Salt Lake City, Utah 84110

18. 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.

19. 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.

20. 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.

21. 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.

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

OWNER:

WILLOW CREEK APARTMENTS V LTD.,  
a Utah limited partnership

David E. Jones

By: Willow Creek Apartments  
Grantsville, Inc.  
Its General Partner

By: David E. Jones  
Its President

UHFA:

UTAH HOUSING FINANCE AGENCY

William H. Erickson

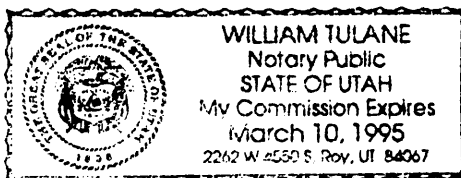
By William H. Erickson  
Executive Director

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

On the 31st day of October, 1991, appeared before me David E. Jones who being by me duly sworn did say that he is the President of Willow Creek Apartments Grantsville, Inc., a Utah corporation, and that the foregoing instrument was signed in behalf of said corporation as General partner of Willow Creek Apartments V Ltd., a Utah limited partnership, by authority of a resolution of its Board of Directors (or Bylaws), and that said David E. Jones acknowledged to me that said corporation executed the same.

William Tulane  
NOTARY PUBLIC  
Residing at: WEBER COUNTY

My Commission Expires:  
3-10-1995



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

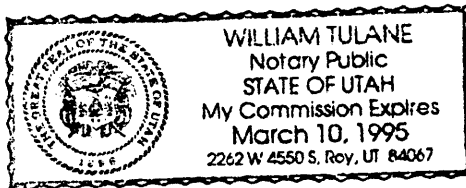
On this 31st day of October, 1991, personally appeared before me William H. Erickson, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the Executive Director of the Utah Housing Finance Agency, 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 Tulane*

NOTARY PUBLIC  
Residing at: WEBER COUNTY

My Commission Expires:

3-10-1995



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EXHIBIT A

County of Tooele, State of Utah:

Beginning at the Northeast corner of Lot 4, Block 21, Plat "A", Grantsville City Survey, Grantsville City; and running thence South 165 feet; thence West 92.5 feet; thence North 165 feet; thence East 92.5 feet to the place of beginning.

Subject to rights of tenants in possession.

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