

12980401
05/02/2019 01:37 PM \$31.00
Book - 10776 Pg - 6415-6425
RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
POOLE & ASSOCIATES LC
4543 S 700 E STE 200
SALT LAKE CITY UT 84107
BY: DRP, DEPUTY - WI 11 P.

Upon Recordation Return to:

Rocky Mountain Community Reinvestment Corporation
Attn: John Montgomery
64 East Winchester St., Suite 230
Salt Lake City, UT 84107

**LOW-INCOME HOUSING
DECLARATION OF RESTRICTIVE COVENANTS AND
SUBORDINATION AGREEMENT**

This Low-Income Housing Declaration of Restrictive Covenants and Subordination Agreement (the "Agreement") is made effective as of the 1st day of May, 2019, by and among Bracken Properties, L.L.C. (including any successors or assigns, the "Project Owner"), Western Region Nonprofit Housing Corporation (including any successors or assigns, "WRNPHC"), and Rocky Mountain Community Reinvestment Corporation f/k/a Utah Housing Corporation ("RMCRC").

Recitals

Whereas, the Project Owner has been provided certain housing credits for the construction, acquisition or rehabilitation of low-income housing units in accordance with federal and/or Utah law with respect to certain real property specifically described in Exhibit A attached hereto (the "Project").

Whereas, on approximately October 10, 2002, the Project Owner entered into that certain Loan Agreement with RMCRC (the "Loan Agreement"), which governs a loan from RMCRC to the Project Owner in the original principal amount of \$700,000.00 (the "Loan"), as amended by that Modification of Loan Agreement dated March 21, 2003, as amended by that Modification of Loan Agreement dated April 9, 2004. The Loan is also evidenced by that certain Promissory Note, dated as of June 15, 2004, executed by the Project Owner in favor of RMCRC (the "Note").

Whereas, the terms of the Loan Agreement and Note require, among other things, that (a) the Loan proceeds be used to purchase, construct and/or renovate the Project, and (b) a certain number or percentage of units in the Project be leased to families whose annual incomes are less the area median income for the area in which the Project is located, as determined by the U.S. Department of Housing and Urban Development ("HUD"), with adjustments based upon family size.

Whereas, the Project Owner's obligations to RMCRC under the Loan Agreement and Note are secured by that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of June 15, 2004, and recorded with the Salt Lake County Recorder's

Office as Entry No. 9102310, in Book 9006, beginning at page 362 (the "RMCRC Trust Deed"). The Loan Agreement, the Note, the RMCRC Trust Deed, and all other documents evidencing, guarantying or securing the Loan and Note are referred to collectively herein as the "Loan Documents."

Whereas, in conjunction with the Loan, and pursuant to one or more agreements with Utah Housing Corporation ("UHC"), the Project Owner and UHC entered into a Low-Income Housing Credit Commitment Agreement and Declaration of Restrictive Covenants, dated as of September 18, 2002, and recorded with the Salt Lake County Recorder's Office on September 26, 2002, as Entry No. 8366472 in Book 8654, beginning at Page 7020 (the "Original Declaration"), which established various restrictions for an extended use period for the Project.

Whereas, the Project Owner represents that the Project satisfies the requirements of Internal Revenue Code ("IRC") § 42 and Utah Code §§ 59-7-607 and 59-10-129, as a qualified low-income housing project, and the Project Owner represents that it will continue to maintain the Project in conformity and continuous compliance with IRC § 42, Utah Code §§ 59-7-607 and 59-10-129, and applicable regulations thereunder, as the same may hereafter be amended, any other federal or Utah requirements applicable thereto and in conformity with this Agreement.

Whereas, on approximately even date hereof, RMCRC will sell and assign its rights under the Loan and the Loan Documents to WRNPHC, to which sell and assignment the Project Owner consents.

Whereas, it is a condition precedent for RMCRC to sell and assign the Loan and Loan Documents to WRNPHC that the parties enter into this Agreement, to be recorded against the Project.

Whereas, the Project Owner, WRNPHC and RMCRC intend, declare and covenant that the restrictive covenants set forth below shall be and are (a) covenants running with the land for the terms stated herein, (b) binding upon the Project Owner and all subsequent owners of the Project and are not covenants solely of the Project Owner, and (c) senior and superior to the RMCRC Trust Deed.

In consideration of the covenants and agreements set forth herein, including the mutual covenants and promises, and the valuable consideration provided by each party hereto, the sufficiency of which is hereby acknowledged, the Project Owner hereby declares and covenants for itself and all subsequent owners of the Project for the term set forth herein as to the use, occupancy and transfer of the Project, as follows:

1. Recitals. The recitals are hereby incorporated into this Agreement.
2. Set-Aside election. The Project Owner agrees and designates twenty percent (20%) of all current units of the Project (which is nine (9)) as both rent restricted (as defined in IRC § 42), and income restricted as set forth herein. The project Owner agrees that for each taxable year for a period of not less than thirty (30) years from the date of the Original Declaration, twenty percent (20%) of the units of the Project will be occupied by individuals

whose income is fifty percent (50%) or less of the area median gross income, with respect to the county in which the Project is located, as determined annually and published by HUD.

3. Consistency, Special Use of Units, and Nondiscrimination. The Project Owner agrees that the residential rental units of the Project occupied by qualifying low-income tenants will be of comparable quality to all other units in the Project. The Project Owner will not discriminate against any tenant or prospective tenant because of race, color, religion, age, sex, sexual preference, national origin, familial status, source of income or disability. The Project Owner will comply in all respects with all applicable federal, state and local laws, rules, regulations and Executive Orders relating to housing and employment.

4. Notification of Non-Compliance. The Project 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 IRC § 42 or Utah Code §§ 59-7-607 and 59-10-129, as the same may be amended from time to time, the regulations issued thereunder, any other state or federal requirements or any provisions of this Agreement. If the Project Owner becomes aware of any incidence or manner in which the Project does not comply with IRC § 42, Utah Code §§ 59-7-609 and 59-10-129, or this Agreement, then the Project Owner shall, within thirty (30) days after the date Project Owner becomes aware of such non-compliance, notify WRNPHC and/or the Internal Revenue Service of such non-compliance. Pursuant to Income Tax Regulations § 1.42-5(e)(3), WRNPHC may notify the Internal Revenue Service (“IRS”) of any such non-compliance of which it becomes aware.

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

6. Maintenance, Modification, and Replacement. Low-income units may be removed from the market for purposes of maintenance, modification, or demolition and replacement provided the work is completed within twenty-four (24) calendar months and the number of restricted units is not permanently reduced for a period of not less than thirty 30 years from the date of the Original Declaration.

7. Effect of Subordinate Lender Foreclosure. RMCRC, WRNPHC and the Project Owner each acknowledge and agree that (a) the terms and conditions of this Agreement shall remain in full force and effect for a period of not less than thirty (30) years after the date of the Original Declaration (the “Extended Use Period”); (b) during the Extended Use Period, this Agreement shall unconditionally be and remain an encumbrance or charge on the Project, prior and superior to any lien or charge of the RMCRC Trust Deed, which RMCRC Trust Deed is specifically subordinated to this Agreement pursuant to the terms hereof; and (c) in the event WRNPHC forecloses on the Project during the Extended Use Period pursuant to the terms of the RMCRC Trust Deed or other Loan Documents, the terms and conditions of this Agreement shall remain in full force and effect during the Extended Use Period.

8. Compliance Monitoring. The Project Owner acknowledges that after the sale and assignment of the Loan and Loan Documents from RMCRC to WRNPHC, (a) WRNPHC, or its delegate or successor, is required to monitor the Project's compliance with the requirements of IRC § 42, Utah Code §§ 59-7-609 and 59-10-129, and the covenants of this Agreement, and (b) RMCRC has no further obligation to monitor the Project's compliance with such statutes or any other applicable laws. Accordingly, the Project Owner agrees to comply with the obligations, terms and conditions of any compliance monitoring plan of WRNPHC or its successors. 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.

9. Inspection. The Project Owner shall permit, during normal business hours, upon reasonable notice, any duly authorized representative of WRNPHC or its successors to inspect any books and records of the Project Owner relating to the Project and the incomes of low-income tenants. Specifically, the Project Owner shall make available to WRNPHC and its successors the documentation substantiating incomes of low income tenants. As required by Income Tax Regulation § 1.42-5(e)(3), WRNPHC may notify the IRS of any non-compliance with the provisions of IRC § 42, or of this Agreement, with which it becomes aware.

10. Eviction Following Extended Use Period. Notwithstanding the termination of the Extended Use Period pursuant to the provisions of paragraph 7 above, the Project Owner shall not evict or terminate the tenancy (other than for good cause) of an existing low-income tenant of any low-income unit in the Project or increase the gross rent with respect to a low-income unit, not otherwise permitted under IRC § 42, before the close of the three (3) year period following the termination of the Extended Use Period under the terms of paragraph 7.

11. Subordination. The Project Owner shall obtain the agreement of any prior recorded lienholder (excluding customary nonmonetary liens and encumbrances relating to easements, utilities and similar matters) of any building in the Project whereby the prior recorded lienholder, and its assigns or successors in interest, 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 IRC § 42, for a period of three (3) years from the date of any foreclosure with respect to any qualified low-income building in the Project.

12. Restrictive Covenants. The Project 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, the Project Owner and WRNPHC, 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 7 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 WRNPHC shall be authorized to, and shall, execute a release for recordation purposes if so requested by the then owner of the Project.

19. Representations.

a. The Project Owner hereby warrants and represents as follows: (i) the Project is located upon the real property described in Exhibit "A" attached hereto; (ii) the Project Owner has the authority and power to execute, deliver and have recorded this Agreement; and (iii) the individuals signing on behalf of the Project Owner are duly authorized, empowered and have the authority to bind the Project Owner to the terms and conditions of this Agreement.

b. RMCRC hereby warrants and represents as follows: (i) RMCRC has the authority and power to execute, deliver and have recorded this Agreement; and (ii) the individuals signing on behalf of RMCRC are duly authorized, empowered and have the authority to bind RMCRC to the terms and conditions of this Agreement.

c. WRNPHC hereby warrants and represents as follows: (i) WRNPHC has the authority and power to execute, deliver and have recorded this Agreement; and (ii) the individuals signing on behalf of WRNPHC are duly authorized, empowered and have the authority to bind WRNPHC to the terms and conditions of this Agreement.

20. Attorneys' Fees. In any action or defense associated with this Agreement, the prevailing party shall be reimbursed by the non-prevailing party for the costs, including attorney's fees, incurred by the prevailing party in that action or defense.

21. Waiver. No action or failure to act by the parties shall constitute a waiver of any right or duty afforded any party under this Agreement, nor shall any such action or failure to act constitute approval of or acquiescence in any breach hereunder, except as may be specifically agreed to in writing. A waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

22. Modifications and Integration. This Agreement may only be modified by a writing signed by all the Project Owner and the holder of the Loan and Loan Documents. This Agreement constitutes the entire agreement of the parties with respect to the subject matter addressed herein. No other agreements, oral or written, pertaining to the matters herein exist between the parties. This Agreement hereby supersedes any other agreement between the parties respecting the subject matter addressed herein.

23. Annual Certification. The Project Owner shall, in a form designed by WRNPHC, annually certify to WRNPHC its compliance with all the provisions of this Agreement and IRC § 42 and regulations issued thereunder.

24. Definitions. All words, definitions and terms used in this Agreement that are defined or set forth in IRC § 42 shall have the meanings given in IRC § 42.

25. Severability. If any provision of this Agreement or the application thereof to any party or circumstance shall be invalid or unenforceable to any extent, the remainder of the

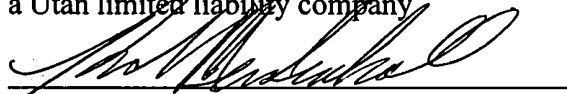
Agreement and the application of such provisions to any other party or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

[Signature Pages Follow]

PROJECT OWNER:

BRACKEN PROPERTIES, L.L.C., a
Utah limited liability company


By its Manager, RWM Acquisitions, LLC,
a Utah limited liability company



Rickey W. Mendenhall
Manager

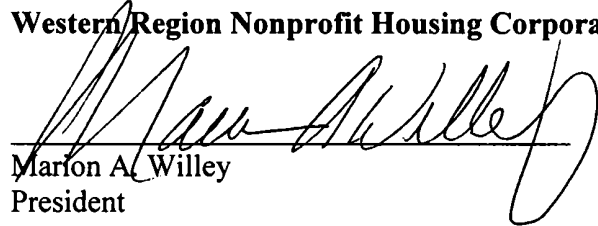
STATE OF UTAH)
)
COUNTY OF SALT LAKE)

On the 26 day of April, 2019, personally appeared before me Rickey W. Mendenhall, the signer of the foregoing instrument, who duly acknowledged to me that (s)he is the Manager of RWM Acquisitions, LLC, a Utah limited liability company, and that (s)he executed the same in such capacity.


Notary Public
Residing at: _____




Western Region Nonprofit Housing Corporation



Marion A. Willey
President

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

On the 25 day of April, 2019, personally appeared before me Marion A. Willey, the signer of the foregoing instrument, who duly acknowledged to me that (s)he is the President of Western Region Nonprofit Housing Corporation and that (s)he executed the same in such capacity.



Notary Public
Residing at: _____



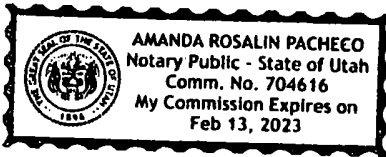
With the Consent of:

Rocky Mountain Community Reinvestment Corporation

Holly Montoya
By: Holly Montoya
Title: Lead Closing Manager

STATE OF Utah)
COUNTY OF Salt Lake)

On the 1 day of May, 2019, personally appeared before me Holly Montoya the signer of the foregoing instrument, who duly acknowledged to me that (s)he is the Lead Closing of Manager Rocky Mountain Community Reinvestment Corporation and that (s)he executed the same in such capacity.



A Pacheco
Notary Public
Residing at: _____

[Signature Page of RMCRC]

EXHIBIT "A"

(Legal Description)

Real property located in Salt Lake County, State of Utah, more particularly described as follows:

Parcel 1:

Commencing at the Northwest corner of Lot 4, Block 48, Plat "B", Salt Lake City Survey, and running thence East 330 feet; thence South 46.5 feet; thence West 330 feet; thence North 46.5 feet to the place of beginning.

Parcel No. 16-06-253-011

Parcel 2:

Commencing 72 feet North of the Southwest corner of Lot 4, Block 48, Plat "B", Salt Lake City Survey, and running thence North 46.5 feet; thence East 20 rods; thence South 46.5 feet; thence West 20 rods to the place of beginning.

Parcel No. 16-06-253-012