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When Recorded Return to:

President
Utah Housing Corporation
554 South 300 East
Salt Lake City, Utah 84111

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10/14/2004 11:18 AM \$50.00
Book - 9048 Pg - 5297-5307
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE
BY: SBM, DEPUTY - WI 11 P.

Tax Parcel I.D. No.: See Exhibit "A"

AMENDED AND RESTATED

LOW-INCOME HOUSING CREDIT COMMITMENT AGREEMENT

AND DECLARATION OF RESTRICTIVE COVENANTS

This Amended and Restated Low-Income Housing Credit Commitment Agreement and Declaration of Restrictive Covenants (the "Agreement") is made effective as of the ____ day of October, 2004 by and between Willow Park Associates, LLC, a Utah limited liability company, its successors and assigns (the "Project Owner"), and Utah Housing Corporation, a public corporation of the State of Utah (the "UHC").

RECITALS

WHEREAS, the Project Owner and UHC entered into and executed that certain Low-Income Housing Credit Commitment Agreement and Declaration of Restrictive Covenants, dated May 20, 2003 ("Original Agreement"), which was recorded in the Salt Lake County Recorder's Office on June 27, 2003, as Entry No. 8707511, Book 8827 pages 3307-3317 which provides for certain regulatory and restrictive covenants governing the use, occupancy and transfer of that certain low-income housing tax credit project referred to as Willow Park Apartments (the "Project") located upon and being a part of the real property described in Exhibit "A" attached hereto and incorporated herein by this reference;

WHEREAS, subsequent to the execution and recording of the Original Agreement, the Project Owner made application to UHC and was awarded State of Utah low-income housing credits, in addition to the federal low-income housing credits previously awarded, for the construction, acquisition and/or rehabilitation of the Project;

WHEREAS, as a condition for the award of State of Utah low-income housing credits, the Project Owner agreed to an adjustment to the rent and income limits for the Project;

WHEREAS, Section 42 of the Internal Revenue Code of 1986, as amended ("IRC § 42"), and Sections 59-7-607 and 59-10-129 of the Utah Code Annotated, as amended ("UCA §§ 59-7-607 and 59-10-129"), provide for the allocation of low-income housing credits for the construction, acquisition and/or rehabilitation of qualified low-income housing buildings;

WHEREAS, the Project Owner represents that the Project satisfies the requirements of IRC § 42 and UCA §§ 59-7-607 and 59-10-129, as a qualified low-income housing project, and the Project Owner represents that it will maintain the Project in conformity and continuous compliance with IRC § 42, UCA §§ 59-7-607 and 59-10-129, and applicable regulations thereunder, as the same may hereafter be amended, any other federal or state requirements applicable thereto and this Agreement;

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

WHEREAS, UHC is unwilling to allocate any low-income housing credits to the Project Owner for the Project unless the Project 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, the Project 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 Project 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, the Project Owner and UHC agree as follows:

1. Applicable Fraction. The Project Owner agrees that the applicable fraction, as defined in IRC § 42(c)(1), for each taxable year in the extended use period, as defined in IRC § 42, for the following qualified low-income buildings of the Project will not be less than 100 %:

| <u>Building Id. No.</u> | <u>Address</u> |
|-------------------------|--|
| UT-2002-03001 | 3363 & 3367 W. Desert Willow Dr., West Valley City, UT 84119 |
| UT-2002-03002 | 3364 & 3368 W. Desert Willow Dr., West Valley City, UT 84119 |
| UT-2002-03003 | 3764 & 3768 S. Desert Willow Dr., West Valley City, UT 84119 |
| UT-2002-03004 | 3754 & 3758 S. Desert Willow Dr., West Valley City, UT 84119 |
| UT-2002-03005 | 3724, 3728, 3734 & 3738 S. Desert Willow Dr., West Valley City, UT 84119 |
| UT-2002-03006 | 3725 & 3729 S. Globe Willow Court, West Valley City, UT 84119 |
| UT-2002-03007 | 3733 & 3737 S. Globe Willow Court, West Valley City, UT 84119 |
| UT-2002-03008 | 3753 & 3757 S. Bent Willow Place, West Valley City, UT 84119 |
| UT-2002-03009 | 3761, 3765, 3769 & 3773 S. Bent Willow Place, West Valley City, UT 84119 |

2. Set-Aside Election. The Project Owner agrees that all 88 units of the Project shall be restricted as provided for herein and paragraph 13. The Project Owner

agrees that for each taxable year in the extended use period, as defined in IRC § 42, the restricted residential units in the Project shall be both rent restricted, as defined in IRC §42, and occupied by individuals (hereinafter "low-income tenants") whose income is 60% or less of the area median gross income, as more specifically provided in paragraph 13, with respect to the county in which the Project is located, as annually determined and published by H.U.D.

3. 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 UCA §§ 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, UCA §§ 59-7-609 and 59-10-129, or this Agreement, the Project Owner shall notify UHC of such non-compliance within 30 days after the date Project Owner becomes aware of such non-compliance. As required by Income Tax Regulation § 1.42-5(e)(3), UHC shall notify the Internal Revenue Service ("IRS") of any non-compliance of which UHC becomes aware.

4. Consistency, Special Use of Units and Nondiscrimination. The Project Owner agrees that the residential rental units of the Project occupied by low-income tenants will be of comparable quality to all other units in the Project. To the extent not inconsistent with state and federal fair housing laws, five (5) units of the Project shall be set aside, exclusively used and made accessible as housing for mentally impaired persons, five (5) units of the Project shall be set aside, exclusively used and made accessible as housing for homeless or near homeless persons and four (4) units of the Project shall be set aside, exclusively used and made accessible as housing for physically handicapped persons as the same is defined and applied under state and federal laws. Exceptions to the exclusive use by the foregoing special needs tenants may be permitted by UHC, in its sole discretion, but only after the Project Owner has met UHC requirements for attempting to lease the units to the special needs tenants and establishing that no such special needs tenants are available. 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.

5. Ownership. The Project 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. Release and Indemnification. The Project Owner represents that it has independently reviewed the applicable allocation documents providing for the allocation

of low-income housing tax credits for the Project to ensure the correctness and validity of the same, and has not relied on any representations or statements from UHC with respect to the Project Owner's entitlement to the allocation of low-income housing tax credits for the Project. The Project Owner agrees to release and hold UHC, its officers, trustees, employees and agents harmless from any claim, loss, liability, demand or judgment incurred by or asserted against the Project Owner resulting from or relating to the allocation of low-income housing credits, or the recapture thereof by the Internal Revenue Service or the Utah Tax Commission, or the monitoring of the Project's compliance with IRC § 42, UCA §§ 59-7-609 and 59-10-129 and this Agreement. Further, the Project Owner agrees to defend, indemnify and hold UHC, its officers, trustees, employees and agents harmless from any claim, loss, liability, demand, judgment or cost (including without limitation reasonable attorneys' fees) incurred by or asserted against UHC, its officers, trustees, employees and agents arising out of the negligence, intentional misconduct or misrepresentation of the Project Owner or breach of this Agreement by the Project Owner.

7. Compliance Monitoring. The Project Owner acknowledges that UHC, or its delegate, is required to monitor the Project's compliance with the requirements of IRC § 42, UCA §§ 59-7-609 and 59-10-129, and the covenants of this Agreement. Accordingly, the Project Owner agrees to comply with the obligations, terms and conditions of UHC's Compliance Monitoring Plan, as the same may be amended from time to time. 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. Inspection. The Project Owner shall permit, during normal business hours, upon reasonable notice, any duly authorized representative of UHC 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 UHC the documentation substantiating incomes of low-income tenants. As required by Income Tax Regulation § 1.42-5(e)(3), UHC shall notify the IRS of any non-compliance with the provisions of IRC § 42, or of this Agreement, with which it becomes aware.

9. Extended Use Period. The Project Owner and UHC agree that the extended use period, as used in IRC § 42(h)(6)(D) and this Agreement, for each low-income building of the Project, means the period beginning on the first day in the 15-year compliance period, as defined in IRC § 42(i)(1), on which a qualified low-income building is a part of a qualified low-income housing project and ending on the date which is 84 years after the close of the compliance period (for a total of 99 years from the beginning date of the compliance period for a qualified low-income building); however, notwithstanding the foregoing to the contrary, the extended use period shall terminate on the date a qualified low-income building is acquired by foreclosure (or instrument in lieu of foreclosure), unless the IRS or UHC determines that such acquisition is part of an arrangement of the Project Owner a purpose of which is to terminate the extended use period. The Project Owner agrees that IRC § 42(h)(6)(E)(i)(II) shall not apply to, and

shall not cause the termination of, the extended use period applicable to any building of the Project.

10. Eviction During and Following Extended Use Period. During the extended use period and the three (3) year period following the termination of the extended use period pursuant to a foreclosure (or instrument in lieu of foreclosure), 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.

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. The foregoing agreement shall be placed of record in the real property records of the county in which the Project is located.

12. Sale of Building. Pursuant to IRC § 42(h)(6)(B)(iii), no portion of a qualified low-income building to which this Agreement applies, 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.

13. Rent and Income Limits. The Project Owner agrees that 88 units of the Project will be leased, throughout the extended use period as set forth in paragraph 9 above, (i) for a maximum monthly rental fee which is affordable to the tenants residing therein (as calculated below), and (ii) to individuals whose annual income (as defined under Section 8 of the United States Housing Act of 1937), aggregated for all individuals residing in a given unit, does not exceed, the percentages set forth below of the area median income for the county in which the unit is located:

| <u>Units</u> | <u>Type</u> | <u>Income Limits</u> |
|--------------|-----------------|---------------------------|
| 8 | 2 bedroom units | 40% of area median income |
| 13 | 2 bedroom units | 50% of area median income |
| 13 | 2 bedroom units | 55% of area median income |
| 14 | 2 bedroom units | 50% of area median income |
| 10 | 3 bedroom units | 40% of area median income |
| 18 | 3 bedroom units | 50% of area median income |
| 12 | 3 bedroom units | 42% of area median income |

For purposes of determining the affordability of monthly rental payments, the maximum monthly rental fee is calculated as follows:

(a) First, multiply the monthly rent limit applicable to the unit as calculated by UHC for the applicable year, based on bedroom size, based on 50% of area median income for the county in which the unit is located, by 2 (to arrive at a rental amount based on 100% of area median income);

(b) Second, multiply the product derived in paragraph a above by the percentages set forth below:

| <u>Units</u> | <u>Type</u> | <u>Rent Limits</u> |
|--------------|-----------------|---------------------------|
| 8 | 2 bedroom units | 35% of area median income |
| 13 | 2 bedroom units | 45% of area median income |
| 13 | 2 bedroom units | 50% of area median income |
| 14 | 2 bedroom units | 45% of area median income |
| 10 | 3 bedroom units | 35% of area median income |
| 18 | 3 bedroom units | 45% of area median income |
| 12 | 3 bedroom units | 37% of area median income |

For purposes of determining the maximum monthly rental fee pursuant to this paragraph, the maximum monthly rental fee amount shall include an allowance for tenant-paid utilities as provided in IRC § 42 or notices, regulations or revenue rulings issued or promulgated thereunder. Notwithstanding the foregoing, upon written approval from UHC, the Project Owner may increase the maximum monthly rental fee or income limit applicable to tenants for any unit of the Project in an amount agreed to by UHC, as UHC shall decide in its sole discretion; however, under no circumstances may the maximum monthly rental fee or income limit applicable to tenants for any given unit of the Project exceed the rent or income limits established under IRC § 42.

14. Non-profit. A qualified nonprofit organization is required to own an interest in the Project (directly or through a partnership or limited liability company) and materially participate (within the meaning of IRC § 469(h)) in the development and operation of the Project throughout the extended use period applicable to the Project. The term “qualified nonprofit organization” shall have that meaning set forth in IRC § 42(h)(5)(C). A qualified nonprofit organization may satisfy the requirements of this paragraph through a “qualified corporation” within the meaning of IRC § 42(h)(5)(D)(ii).

15. 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 UHC, 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 UHC shall execute a release for recordation purposes if so requested by the then owner of the Project.

16. Recordation. This Agreement shall be placed of record in the real property records of the county in which the Project is located.

17. Enforcement. All of the terms, provisions and restrictions of the Agreement may be enforced by UHC. In addition, UHC and the Project Owner acknowledge and agree that any individual who meets the income limitations applicable to the Project under IRC § 42(g) (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.

18. Section 8 Tenants. The Project Owner shall not refuse to lease any unit of the Project to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.

19. Statutory Changes. UHC and the Project Owner recognize that the provisions of IRC § 42 and UCA §§ 59-7-607 and 59-10-129 may be amended from time to time. The Project Owner agrees to maintain the Project in compliance and conformity with the requirements of IRC § 42 and UCA §§ 59-7-607 and 59-10-129, and the regulations issued thereunder, as the same are amended from time to time. However, if in the opinion of UHC subsequent revisions to IRC § 42 and UCA §§ 59-7-607 and 59-10-129 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.

20. Notices. All notices to be given to UHC or to the Project Owner 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 UHC: | President Utah Housing Corporation 554 South 300 East Salt Lake City, Utah 84111 |
|---------|---|

| | |
|-----------------------|--|
| to the Project Owner: | Willow Park Associates, LLC 756 South 200 East, Suite A Salt Lake City, Utah 84111 |
|-----------------------|--|

21. Governing Law. 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.

22. Representations. The Project Owner hereby warrants and represents to UHC as follows:

(a) The Project is located upon the real property described in Exhibit "A" attached hereto;

(b) The Project Owner has the authority and power to execute, deliver and have recorded this Agreement;

(c) 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.

UHC hereby warrants and represents to the Project Owner as follows:

(d) UHC has the authority and power to execute, deliver and have recorded this Agreement;

(e) The individuals signing on behalf of UHC are duly authorized, empowered and have the authority to bind UHC to the terms and conditions of this Agreement.

23. 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 attorneys' fees, incurred by the prevailing party in that action or defense.

24. Recitals. The recitals are hereby incorporated into this Agreement.

25. 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.

26. Modifications and Integration. This Agreement may only be modified by a writing signed by all of the parties hereto. 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.

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

28. 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.

29. Counterparts. 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.

30. 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.

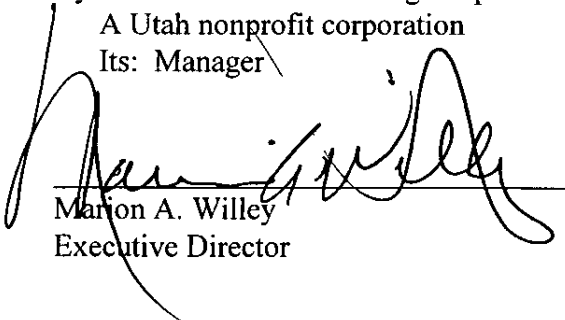
31. Headings. Titles or headings to the sections of this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement.

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

PROJECT OWNER:

WILLOW PARK ASSOCIATES, LLC,
a Utah limited liability company


By: Utah Non Profit Housing Corporation,
A Utah nonprofit corporation
Its: Manager



Marion A. Willey
Executive Director

UHC:

UTAH HOUSING CORPORATION



William H. Erickson
President

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

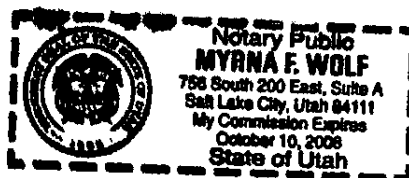
On the 13 day of October, 2004, personally appeared before me Marion A. Willey, the signer of the foregoing instrument, who duly acknowledged to me that he is the Executive Director of Utah Non Profit Housing Corporation, which is the Manager of Willow Park Associates, LLC, and that he executed the same.

Myrna F. Wolf

NOTARY PUBLIC
Residing at: Salt Lake City

My Commission Expires:

10/10/08



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

On the 12th day of October, 2004, personally appeared before me William H. Erickson, the signer of the foregoing instrument, who duly acknowledged to me that he is the President of Utah Housing Corporation and that he executed the same.

Carol Finney

NOTARY PUBLIC
Residing at: Salt Lake City

My Commission Expires:

3-26-05

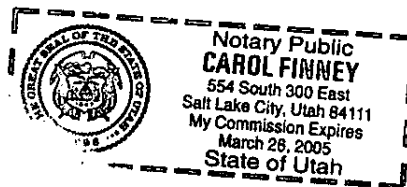


EXHIBIT "A"

That certain parcel of real property, situated in Salt Lake County, State of Utah, and more particularly described as follows:

A part of the Northeast Quarter of Section 32, Township 1 South, Range 1 West, of the Salt Lake Base and Meridian, described as follows:

Beginning at a point on the North Right of Way line of 3800 South State Street located South 89°55'20" West 990.00 feet and North 25.00 feet from the East Quarter corner of said section, and running thence South 89°55'20" West 190.00 feet along said North Right of Way line; thence North 129.75 feet; thence South 89°55'20" West 140.00 feet; thence North 749.25 feet; thence North 89°57'00" East 330.00 feet to the West line of the Deseret Subdivision; thence South 878.84 feet along said West line to the point of beginning.

Tax Parcel Numbers:

15-32-276-031; 15-32-276-032; 15-32-276-040; 15-32-276-041; 15-32-276-042;
15-32-276-043; 15-32-277-032; 15-32-277-033; 15-32-277-034; 15-32-277-037;
15-32-277-038; 15-32-277-039; 15-32-277-040; 15-32-276-029; 15-32-276-030;
15-32-276-033; 15-32-276-034; 15-32-277-028; 15-32-277-029; 15-32-277-035;
15-32-277-036