

After Recording, please return to

Credit Department  
Rocky Mountain Community Reinvestment  
Corporation  
64 East Winchester Street, Suite 330  
Salt Lake City, Utah 84107

CT-150875-MCM

14018818 B: 11373 P: 8880 Total Pages: 14  
09/20/2022 04:19 PM By: mpalmer Fees: \$40.00  
Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.  
1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84121

Tax Parcel I.D. No. 15-32-276-049

## SUBORDINATION AGREEMENT

September 16, 2022, by and between OLENE WALKER HOUSING LOAN FUND (including its successors and assigns, "Subordinated Lender") and ROCKY MOUNTAIN COMMUNITY REINVESTMENT CORPORATION, a Utah nonprofit corporation (including its successors and assigns, "RMCR").

### RECITALS

A. Willow Park Associates, LLC, a Utah limited liability company ("Borrower"), owns or will own certain real property located in Salt Lake County, State of Utah, more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein (together with all improvements located thereon, the "Subject Property").

B. Borrower has requested that RMCR lend Borrower funds not to exceed the original principal amount of TWO MILLION ONE HUNDRED THOUSAND AND NO/100 Dollars (\$2,100,000.00) (the "Subject Property Loan") for financing of or relating to the Subject Property, such obligation to be evidenced by a certain Multifamily Note (the "Note") dated as of even date herewith, and secured by, among other things, a first lien covering the Subject Property, evidenced by a Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Deed of Trust") dated as of even date herewith, and executed by the Borrower in favor of RMCR. The Note, Deed of Trust, and all other documents evidencing, securing or relating to the Subject Property Loan are hereinafter collectively referred to as the "Loan Documents."

C. Subordinated Lender is the beneficiary under that certain Trust Deed With Assignment of Rents dated as of August 28, 2002, executed by Borrower, as Trustor, and recorded in the official records of the Recorder's Office of Salt Lake County, State of Utah (the "County Recorder's Office"), on September 4, 2002, as Entry No. 8341689, at Book 8643, Pages 3968-3974 (the "Subordinated Lender Trust Deed").

D. The Subordinated Lender Trust Deed, together with that certain Deed Restriction dated as of August 28, 2002, executed in connection therewith and recorded in the official records of the Salt Lake County Recorder's Office on September 4, 2002, as Entry No. 8341690, at Book 8643, Pages 3975-3980, a copy of which is attached hereto as Exhibit "B" (the "Deed Restriction") encumber a portion of the Subject Property and secure indebtedness to the Subordinated Lender under that certain Trust Deed Note dated as of August 28, 2002 in the

original principal sum of SIX HUNDRED FIFTY THOUSAND AND NO/100 Dollars (\$650,000.00) (the "Subordinated Lender Note"). The Subordinated Lender Note and the Subordinated Lender Trust Deed, and all other documents evidencing, securing or relating to the Subordinated Lender Note (but excluding the Deed Restriction) are collectively referred to as the "Subordinated Lender Loan Documents."

E. In connection with the Subject Property Loan to Borrower from RMCRC, Borrower has agreed to procure this Agreement to be executed by the Subordinated Lender and delivered to RMCRC.

F. It is a condition precedent to RMCRC making the Subject Property Loan that the Subject Property Loan shall be and remain at all times prior and superior to any indebtedness owed by Borrower to Subordinated Lender, and that the Deed of Trust and the security interests and all other rights granted under the Loan Documents shall be and remain at all times a first position lien or charge upon the Subject Property prior and superior to any lien or charge of the Subordinated Lender, including but not limited as relates to the Subordinated Lender Trust Deed and all other Subordinated Lender Loan Documents, in accordance with the terms of this Agreement; provided, for the avoidance of doubt, the Deed Restriction will not be subordinate to the Deed of Trust of RMCRC.

NOW, THEREFORE, the parties hereto agree as follows:

1. The Deed of Trust and any other Loan Document securing the Note in favor of RMCRC, and any renewals or extensions thereof, shall unconditionally be and remain at all times a first priority lien or charge on the Subject Property and any other property therein described, prior and superior to any lien or charge of the Subordinated Lender, including but not limited as relates to the Subordinated Lender Trust Deed and the other Subordinated Lender Loan Documents, and to any claim to such property by Subordinated Lender (regardless of the order in which such documents were signed or filed in the Salt Lake County Recorder's Office); provided, for the avoidance of doubt, the Deed Restriction, which is irrevocable and which shall run with the land (until the later of the expiration of the affordability period and the time the Subordinated Lender Note is paid in full), will not be subordinate to the Deed of Trust of RMCRC.

2. RMCRC would not make its loan above-described or disburse funds thereafter without this Agreement.

3. Subordinated Lender declares, agrees, and acknowledges that:

a. RMCRC may, without affecting the subordination of the Subordinated Lender Loan Documents, among other things: (1) release or compromise any obligation in the Loan Documents, (2) release its liens in, or surrender, release or permit any substitution or exchange of all or any part of any properties, including the Subject Property, securing repayment of the Note, (3) retain or obtain a lien in any other property to further secure payment of the Note, or (4) exercise any remedies available under the Deed of Trust, the other Loan

Documents or applicable law, including but not limited to foreclosure and sale of the Subject Property. Notwithstanding the foregoing, RMCRC shall not, without the prior written consent of the Subordinated Lender, increase the loan amount or increase the payments due under the Loan Documents with the exception of protective payments authorized by RMCRC's Deed of Trust, decrease the term under the Loan Documents, or increase the interest rate under the Loan Documents.

b. It intentionally and unconditionally subordinates the lien or charge of the Subordinated Lender Trust Deed and the other Subordinated Lender Loan Documents in favor of the lien or charge upon the Subject Property set forth in the Loan Documents, and understands that in reliance upon, and in consideration of, this subordination, specific loans and advances are being and will be made under the Loan Documents and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for the reliance upon this subordination and this Agreement. Notwithstanding anything to the contrary in this Agreement or any other documents relating to the Subject Property, the Deed Restriction shall not be subordinate to RMCRC's Loan Documents.

c. It may not amend, restate or modify the Deed Restriction attached hereto as Exhibit "B" without the prior written consent of RMCRC, and any amendment, restatement or other modification of the Deed Restriction without RMCRC's prior written consent will be null, void and of no effect.

4. The parties agree that if Borrower, its successors or assigns is in violation of the provisions of the Deed Restriction after the expiration of any notice or cure period relating thereto, Subordinated Lender may (a) may file a lawsuit or other action against Borrower, its successors or assigns, for specific performance of the Deed Restriction (to which Borrower acknowledges and agrees that a violation of the Deed Restriction constitutes irreparable harm to Subordinated Lender for which a specific enforcement action is appropriate); and/or (b) accelerate the Subordinated Lender Note and may commence collection actions or proceedings against Borrower for amounts owing under the Subordinated Lender Note; and/or (c) enjoin the continuing violation; and/or (d) exercise any other rights and remedies provided by law or equity; provided, however, in no event shall such actions, remedies or proceedings (i) assert, claim as a remedy, or relate to foreclosure of the Subject Property by Subordinated Lender, its successors or assigns (whether judicially or non-judicially), or (ii) affect in any way this subordination agreement and RMCRC's senior lien on the Subject Property, which shall at all times be senior and superior to the lien of Subordinated Lender on the Subject Property. If an enforcement action against Borrower is initiated and Subordinated Lender prevails, Subordinated Lender shall be entitled to receive and retain its costs and attorney's fees, and an order requiring that the units reserved for low income housing shall be brought into and remain in conformity with the Deed Restriction throughout the affordability period and until the loan is paid off, whichever date is later.

5. All notices expressly provided hereunder to be given shall be in writing and shall be (i) hand-delivered, effective upon receipt, (ii) sent by United States Express Mail or by private overnight courier, effective upon receipt, or (iii) served by certified mail. Any such notice or demand served by certified mail, return receipt requested, shall be deposited in the United States mail, with postage thereon fully prepaid and addressed to the party so to be served at its address stated below or at such other address of which said party shall have theretofore notified in writing, as provided above, the party giving such notice. Service of any such notice or demand so made shall be deemed effective on the day of actual delivery as shown by the addressee's return receipt or the expiration of three (3) business days after the date of mailing, whichever is the earlier in time. Notices to be served hereunder shall be addressed to the appropriate address set forth below, or at such other place as the parties may from time to time designate in writing by ten (10) days prior written notice thereof:

If to Subordinated Lender:

OLENE WALKER HOUSING LOAN FUND  
1385 South State Street, 4th Floor  
Salt Lake City, Utah 84115

If to RMCRC:

ROCKY MOUNTAIN COMMUNITY REINVESTMENT  
CORPORATION  
Attn: Chief Credit Officer  
64 East Winchester Street, Suite 330  
Salt Lake City, Utah 84107

6. This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of Utah, without giving effect to conflicts of laws principles.

7. This Agreement may be signed in multiple counterparts with the same effect as if all signatories had executed the same instrument.

8. This Agreement shall be construed as a whole in accordance with its fair meaning and in accordance with governing law. This Agreement has been negotiated by each of the parties (or their respective counsel), and the language of the Agreement shall not be construed for or against any particular party.

9. This Agreement constitutes the entire agreement and understanding of and between the parties in relation to matters described herein, and supersedes and cancels any prior agreements between RMCRC and Subordinated Lender as to the matters set forth herein. No statements, representations, inducements or promises other than as expressly set forth herein have been given or received by any of the parties (nor by their respective agents, employees, attorneys or representatives) in return for the same. All negotiations, oral conversations, statements, representations and/or agreements leading up to the execution of this Agreement are merged herewith and shall not be the basis for any legal rights, claims or defenses in relation to any litigation or otherwise. No parole or extrinsic evidence may be used to contradict any of the

terms of this Agreement. Any amendment to this Agreement must be in writing, signed by duly authorized representatives of the parties hereto, and specifically state the intent of the parties to amend this Agreement.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

SUBORDINATED LENDER: **STATE OF UTAH, DEPARTMENT OF WORKFORCE SERVICES, HOUSING AND COMMUNITY DEVELOPMENT DIVISION, ADMINISTRATOR OF THE OLENE WALKER HOUSING LOAN FUND**

By: *Nathan McDonald*  
Nathan McDonald

Its: Deputy Director of the Housing and Community Development Division, Department of Workforce Services, State of Utah, the Administrator of the Olene Walker Housing Loan Fund

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

The foregoing instrument was acknowledged before me this 19th day of August, 2022, by Nathan McDonald, Deputy Director of the Housing and Community Development Division, Department of Workforce Services, State of Utah, the Administrator of the Olene Walker Housing Loan Fund.



*Lisa Medina*  
Notary Signature and Seal

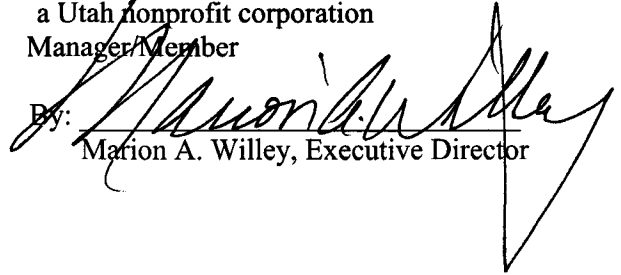


ACKNOWLEDGED AND CONSENTED to as of this 15 ~~14~~ day of August ~~August~~, 2022.

BORROWER: **WILLOW PARK ASSOCIATES, LLC,**  
a Utah limited liability company

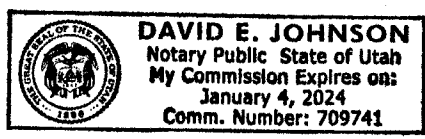
By: Willow Park Management, LLC,  
a Utah limited liability company  
Its: Managing Member

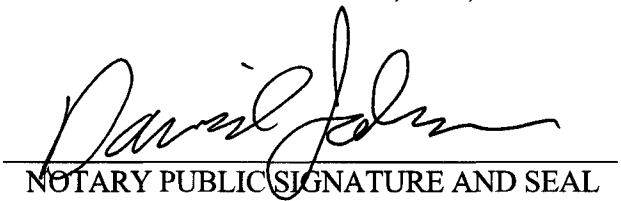
By: Utah Non-Profit Housing Corporation,  
a Utah nonprofit corporation  
Its: Manager/Member

By:   
Marion A. Willey, Executive Director

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

The foregoing instrument was acknowledged before me this 15 day of August, 2022, by Marion A. Willey, as Executive Director of Utah Non-Profit Housing Corporation, a Utah nonprofit corporation, the Manager/Member of Willow Park Management, LLC, a Utah limited liability company, the Managing Member of Willow Park Associates, LLC, a Utah limited liability company.



  
NOTARY PUBLIC SIGNATURE AND SEAL

My Commission Expires:  
01/04/2024



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EXHIBIT A

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(Legal Description of the Subject Property)

PARCEL 1:

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

Beginning at a point on the North right of way line of 3800 South 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.

PARCEL 1A:

A non-exclusive easement, appurtenant to Parcel 1 described herein, for the construction, maintenance, operation, repair and replacement of a sanitary sewer outfall line and necessary components thereof, as defined and granted in that certain Easement recorded May 21, 2003 as Entry No. 8658142 in Book 8801 at Page 3480, over the following described property:

A 15.00 foot Wide Sewer Easement being 7.50 feet on each side of the following described centerline:

A part of the Northeast quarter of Section 32, Township 1 South, Range 1 West, Salt Lake Base and Meridian.

Beginning at a point on the Grantor's South Property Line located South 89°55'20" West 990.00 feet and North 00°00'00" East 903.84 feet and South 89°57'00" West 303.00 feet from the East quarter corner of said section, and running thence North 00°00'00" East 305.47 feet; thence North 64°15'19" East 116.55 feet to the South right-of-way line of 3650 South Street and the end of said easement.

PARCEL 1B:

A non-exclusive easement, appurtenant to Parcel 1 described herein, for emergency ingress and egress for pedestrian and vehicular traffic, as defined and granted in that certain Emergency Access Easement recorded May 21, 2003 as Entry No. 8658143 in Book 8801 at Page 3484, over the following described property:

[Exhibit B to Subordination Agreement]

A 15 foot Wide Access Easement being 7.5 feet on each side of the following described centerline:

A part of the Northeast quarter of Section 32, Township 1 South, Range 1 West, Salt Lake Base and Meridian.

Beginning at a point on the Grantor's South Property Line located South 89°55'20" West 990.00 feet and North 00°00'00" East 903.84 feet and South 89°57'00" West 303.00 feet from the East quarter corner of said section, and running thence North 00°00'00" East 305.47 feet; thence North 64°15'19" East 116.55 feet to the South right-of-way line of 3650 South Street and the end of said easement.

[Exhibit B to Subordination Agreement]

Millcreek Station Apartments LLC  
4842-1863-5448V3  
19396621\_v3

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**EXHIBIT B**

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(Olene Walker Deed Restriction)

See Attached.

[Exhibit B to Subordination Agreement]

~~8341690  
09/04/2002 02:43 PM 21.00  
Book - 8643 Pg - 3975-3980  
GARY M. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
FIRST AMERICAN TITLE  
BY: KCL, DEPUTY - WE 6 P.~~

WHEN RECORDED MAIL TO:  
STATE OF UTAH, OLENE WALKER  
HOUSING TRUST FUND  
324 S STATE STREET #500  
SALT LAKE CITY, UT 84114-9302

Space Above This Line For Recorder's Use

ATC-329844

DEED RESTRICTION

THIS DEED RESTRICTION (the Restriction) is made and effective as of the 28 Day of Aug, 2002 by UTAH NONPROFIT HOUSING CORPORATION, (Sub recipient), for the benefit of the OLENE WALKER HOUSING TRUST FUND, (the State). For good and valuable consideration, Sub recipient hereby agrees as follows for the benefit of the State:

A. Property encumbered. The restriction shall be recorded against that certain real property located at 3356 WEST 3800 SOUTH, and 3366, WEST 3800 SOUTH, and 3771 & 3775 South Harvey Street, West Valley, Utah, 84119, Utah as more fully described on Exhibit A attached hereto and incorporated herein. That real property and all improvements constructed thereon are hereinafter collectively called the AProperty.

B. Nature of Restriction. The project shall carry a Deed Restriction the term of which shall run from the date of execution hereof and remain in effect during the period of affordability under Section 92.252 or Section 92.254 of 24 CFR Part 92 (HOME Investment Partnership Program) as amended from time to time, as applicable, or until the expiration of the Trust Deed Note of like date, whichever is later. Thereby:

- (1) All Olene Walker Housing Trust Fund monies must be used to assist families whose annual incomes do not exceed 80 percent of the median family income for the area as determined by HUD, with adjustments based on family size. In addition, at least 90 percent of Olene Walker Housing Trust Fund monies used for rental housing must be used to assist families whose annual incomes do not exceed 60 percent of the median family income for the area as determined by HUD;
- (2) Rental housing will qualify as affordable only if the project:
  - (a) has at least 20 percent of the Olene Walker Housing Trust Fund assisted rental units occupied by families who have annual incomes that are 50 percent or less of median income as defined by HUD. These units must sustain the Low rents as described in the following section.
  - (b) has at least 70 percent of the Olene Walker Housing Trust Fund assisted rental units occupied by families who have annual incomes that are 60 percent or less of median income as defined by HUD. These units must sustain the High rents as described in the following section.
  - (c) has the remainder of the Olene Walker Housing Trust Fund assisted rental units occupied by families who have annual incomes that are 80 percent or less of median income as defined by HUD. These units also must sustain the High rents as described in the following section.
- (3) Every Olene Walker Housing Trust Fund assisted unit is subject to rent limitations designed to ensure that rents are affordable to low and very low income people. These maximum rents are to be referred to as HOME rents. There are two HOME rents established for projects: High HOME rents and Low HOME rents:
  - (a) High HOME rents: 80% of HOME assisted rental units must have rents that are the lesser of: The Section 8 Fair Market Rents (FMR'S) or area-wide exception rents for existing housing minus tenant paid utilities OR rents which are 30% of adjusted income for households at 65% of median income minus tenant paid utilities;
  - (b) Low HOME rents: 20% of HOME assisted units must have rents which equal 30% of annual income for households at 50% of median income minus tenant paid utilities.
- (4) In projects where Low Income Housing Tax Credits are part of the financing, two sets of rent rules apply:
  - (a) Qualified tax credit units must not exceed tax credit rent limits, while HOME-assisted units must meet HOME rent requirements. If a unit is being counted under both programs, the stricter rent limit applies.
    - (1) Low HOME rent units are subject to the lower of the Low HOME rent and the tax credit

8341690

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rent (usually the tax credit rent).

- (2) High HOME rent units are subject to the lower of the High HOME rent and the tax credit rent (usually the tax credit rent).
- (b) When tenants receive additional subsidy through rental assistance programs such as Section 8, additional requirements apply.
  - (1) Under tax credit rules, if the rental assistance program rent limit exceeds the tax credit rent, the unit rent may be raised to the higher limit as long as tenants pay no more than 30 percent of their adjusted monthly income for housing costs.
  - (2) HOME allows the rent to be raised to the rental assistance program limit only if the tenant pays no more than 30 percent of adjusted income, the subsidy is project-based (not tenant-based), and tenant's income is less than 50 percent of the area median income.
  - (3) In a joint tax credit/HOME-assisted unit, the stricter HOME requirements would apply.

C. SEVERELY AND PERSISTENTLY MENTALLY ILL NON-DISCRIMINATION AGREEMENT.

- (1) Rental housing funded with assistance from the State of Utah, Department of Community and Economic Development, Division of Community Development, Trustee for the Olene Walker Housing Trust Fund will be available to adults with a serious mental illness as defined in paragraph D below, who experience serious and persistent mental illness, without barrier and without screening to eliminate these individuals from tenancy and/or tenancy waiting lists.
- (2) Rental housing operators/managers shall maintain a list of Community Mental Health Centers (CMHC'S) and shall make referral information available to tenants. Availability of this information shall be demonstrated by a public posting visible to tenants.
- (3) Rental housing operators/managers shall contact the Community Mental Health Center in the catchments area(s) in which this housing exists, and establish a referral relationship with CMHV staff. This working relationship will include an understanding that the manger shall call upon CMHC staff for consultation before taking any adverse actions against tenants who appear to need mental health services. Evidence of this working relationship shall be demonstrated by existence of written agreements between the owner/operator and the appropriate CMHC, by the presence of written referral information available to operators/managers, and by their ability to name the CMHC staff with whom they work and the use of such working relationships.
- (4) Strategies shall be developed to insure access to this housing for homeless individuals referred to the operator/manager by Public Housing Authorities, Community Mental Health Centers, and Homeless Shelter staff. Evidence of compliance with this requirement shall be the submittal of written strategies for inclusion of homeless individuals, and written working agreements with the appropriate agencies and organizations. It shall also include comparative data of successful referrals into this housing.
- (5) This policy will not supersede the selection process required by HUD for units, including SRO units, assisted with mod-rehab funds.

D. DEFINITION OF ADULTS WITH A SERIOUS MENTAL ILLNESS

For epidemiological estimation pursuant to Section 1912 C of Subpart 1 of Part B of Title XIX of the Public Health Services Act, as amended by Public Law 102-321, AAdults With a Serious Mental Health Illness are persons:

- Age 18 and over
- Who currently or at any time during the past year,
- Have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within DSM-III-R,
- That has resulted in functional impairment in one or more major life activities
- These disorders include any mental disorder listed in DSM-III-R or ICD-9 or subsequent revisions, (with the exception of DSM-III-R AV Codes, substance use disorders, developmental disorders including mental retardation and Alzheimer's related dementias, unless they co-occur with another diagnosable mental disorder).
- Examples of major life activities of daily living (eating, bathing, dressing); instrumental activities of

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