

BK: 2017 PG: 2556
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Fee Amount: \$77.00
Revenue Tax:
LISA SMITH RECORDER
Madison County, Iowa

Regulatory Agreement

Recorder's Cover Sheet

Preparer Information: John B. Lindsay
Kirton McConkie
50 East South Temple, Suite 400
Salt Lake City, UT 84111
Telephone: 801-239-3188

Taxpayer Information: N/A

Return Document To: John B. Lindsay
Kirton McConkie
50 East South Temple, Suite 400
Salt Lake City, UT 84111
Telephone: 801-239-3188

Grantors: RD ESW, LLC

Grantees: Bonneville Mortgage Company

Parcel Identification Number: N/A

Legal Description: See attached Exhibit A

Document or instrument number of associated documents previously recorded: N/A

WHEN RECORDED, RETURN TO:

Kirton McConkie
50 East South Temple, Suite 400
Salt Lake City, Utah 84111
Attn: John B. Lindsay

**REGULATORY AGREEMENT
(Winterset II Apartments)**

THIS REGULATORY AGREEMENT (the “Agreement”) is made and entered into this 15th day of August, 2017 (the “Closing Date”), by and between Bonneville Mortgage Company, a Utah corporation (“Lender”), and RD ESW, LLC, an Iowa limited liability company (“Borrower”).

PRELIMINARY STATEMENT

Borrower has requested that Lender make a loan to Borrower in the amount of Three Million Eight Hundred Thirty Thousand Dollars (\$3,830,000.00) (the “Loan”) and is secured by the Winterset II Mortgaged Property, the Madison Manor Mortgaged Property, and the Winterset II Mortgaged Property as such terms are defined in that certain Construction and Term Loan Agreement dated the Closing Date, by and between Borrower and Lender (the “Loan Agreement”).

The Loan is for the financing of three (3) low income multifamily housing developments owned by Borrower, including the 24-unit low income housing multifamily housing development known as Winterset II Apartments, located in Madison County, State of Iowa, on a site more particularly described in Exhibit A and by this reference made a part hereof (the “Land”). (The Land and all improvements existing or to be constructed thereon are hereafter referred to as the “Winterset II Mortgaged Property”)

The Loan will be governed by the Loan Agreement and will be evidenced, among other documents, by a Multifamily Note dated the Closing Date, executed by Borrower and payable to Lender (the “Note”) and will be secured by, among other collateral, a Multifamily Mortgage, Assignment of Rents and Security Agreement, pertaining to the Winterset II Mortgaged Property, dated the Closing Date (the “Winterset II Security Instrument”), to be recorded in the land records of Madison County, State of Iowa.

Lender is agreeable to making the Loan to Borrower if the Loan is the subject of a ninety percent (90%) guarantee from the United States Secretary of Agriculture, acting through the United States Department of Agriculture, Rural Housing Service (“RHS”) under Section 538 of the Housing Act of 1949, 12 U.S.C., Section 1490p-2 (the “RHS Guarantee”). As a condition precedent to providing the RHS Guarantee, RHS requires that Borrower enter into this Agreement.

NOW, THEREFORE, in consideration of Lender making the Loan to Borrower, and of the mutual undertakings set forth below, Lender and Borrower agree as follows:

1. **Definitions.** As used in this Agreement, “**Lender**” means the entity identified as “Lender” in the first paragraph of this Agreement, or any subsequent holder of the Note. Any other capitalized terms that are used in this Agreement but not defined in this Agreement shall have the meanings assigned to them by the Loan Agreement.

2. **Covenants of Borrower.** Borrower shall do all of the following:

- a. Make all payments due under the Note, all deposits to escrows required for Impositions as required by the Winterset II Security Instrument, and all deposits to required escrows and reserves in the Loan Agreement for future capital needs.
- b. Maintain the Winterset II Mortgaged Property in good physical and financial condition at all times.
- c. Maintain a complete set of books and financial records for the Winterset II Mortgaged Property, as required by the Winterset II Security Instrument.
- d. Provide Lender audited financial statements, in accordance with generally accepted government auditing standards, for each fiscal year of Borrower within ninety (90) days of calendar year end as required by the Winterset II Security Instrument, and simultaneously provide RHS a copy of such statements.
- e. Make the Winterset II Mortgaged Property’s books and financial records available for review by the United States Department of Agriculture Inspector General, RHS and the General Accounting office or their representatives, upon appropriate notification.
- f. Comply with the Affirmative Fair Housing Marketing Plan provided to Lender in conjunction with the Loan and with all other applicable federal, state and local laws regarding fair housing, including but not limited to provisions of such laws that are applicable to federally assisted multifamily or seniors housing.
- g. Comply with civil rights laws affecting federally assisted multifamily or seniors housing programs and the American Disabilities Act.
- h. Comply with all other applicable federal, state and local environmental laws.
- i. Maintain the Winterset II Mortgaged Property, and all Personalty associated with it, as its sole asset, and remain at all times a single purpose entity.

- j. Manage the Winterset II Mortgaged Property in a manner that complies with the Winterset II Security Instrument and is satisfactory to RHS, including but not limited to compliance with the management plan and agreement submitted by Borrower to Lender in conjunction with the Loan and Winterset II Mortgaged Property.
- k. Provide management satisfactory to RHS and comply with the Lender-approved management plan and agreement submitted to Lender under the preceding Subsection 2.j.
- l. Give written notice to Lender of any violation of Borrower's obligations under this Agreement within five (5) days after first discovering any such violation.
- m. Cooperate and work with Lender concerning any workout situation involving the Winterset II Mortgaged Property.
- n. Obtain and maintain property insurance and any other insurance coverage required to protect the Winterset II Mortgaged Property and all other collateral and security securing the Loan.

3. **Covenants of Borrower regarding Occupancy.** Borrower shall do all of the following:

- a. Maintain the Winterset II Mortgaged Property in accordance with 7 C.F.R. Section 3565.352 and the Deed Restriction.
- b. Without limiting the generality of Subsection (a), make the Winterset II Mortgaged Property available for occupancy only by families or individuals whose incomes at the time of initial occupancy do not exceed one hundred fifteen percent (115%) of the area median income. After initial occupancy, a tenant's income may exceed these limits.
- c. Lease each dwelling unit in the Winterset II Mortgaged Property for a rental that does not exceed thirty percent (30%) of one hundred fifteen percent (115%) of area median income, adjusted for family size.
- d. Establish rents for dwelling units in the Winterset II Mortgaged Property so that, on an annual basis, the average monthly rent for a project, taking into account all individual unit rents, including any tenant-paid utilities, must not exceed 1/12th of thirty percent (30%) of one hundred percent (100%) of area median annual income, adjusted for family size.

- e. Lease dwelling units only to tenants who are United States citizens or a non-citizens who is a qualified alien as defined in 7 C.F.R. Section 3565.3.

“Area median income” shall be determined and adjusted for family size in accordance with guidance on the subject issued by RHS. To the extent utilities are paid by the tenant, “rent” or “rental” shall consist of the rent for the dwelling unit payable under the lease plus an allowance for utilities determined in accordance with administrative guidance issued by RHS.

4. **Income Verification.** Borrower will obtain, complete, and maintain on file a certification by each prospective tenant of its income, using a form acceptable to Lender. Borrower shall make a good faith effort to verify that the income information provided by a prospective tenant is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) conduct a credit report or similar search, (4) obtain an income verification from the applicant's current employer, (5) obtain an income verification from the Social Security Administration if the applicant receives assistance from either of such agencies, or (6) if the applicant is unemployed and does not have an income tax return, obtain another form of independent verification.

5. **Covenants to Run With the Land.** Borrower hereby subjects the Winterset II Mortgaged Property to the covenants, reservations and restrictions set forth in this Agreement. Lender and Borrower hereby declare their express intent that the covenants, reservations and restrictions set forth in this Agreement shall be deemed covenants running with the land and shall pass to and be binding upon Borrower's successors in title to the Winterset II Mortgaged Property, until the termination of this Agreement under Section 7 of this Agreement. Every contract, deed or other instrument hereafter executed covering or conveying the Winterset II Mortgaged Property or any portion of the Winterset II Mortgaged Property shall be deemed to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in that contract, deed or other instrument.

6. **Burden and Benefit.** Borrower and Lender intend that the burdens of the covenants set forth in this Agreement touch and concern the land in that Borrower's interest in the Winterset II Mortgaged Property is rendered less valuable as a result of them. Borrower and Lender intend that the benefits of the covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Winterset II Mortgaged Property by tenants whose incomes are below the levels set forth in Section 3 of this Agreement, who are the intended beneficiaries of the covenants.

7. **Term of Agreement.** This Agreement will apply to the Winterset II Mortgaged Property during the term of the original Loan unless the housing is acquired by foreclosure or an instrument in lieu of foreclosure, or the United States Department of Agriculture waives the applicability of this Agreement after determining that each of the following three circumstances exist.

- a. There is no longer a need for low-and moderate-income housing in the market area in which the Winterset II Mortgaged Property is located;
- b. Housing opportunities for low-income households and minorities will not be reduced as a result of the waiver; and
- c. Additional federal assistance will not be necessary as a result of the waiver.

8. Event of Default. Any failure by Borrower to perform any of its obligations under this Agreement as and when required, which continues for a period of thirty (30) days after notice of such failure by Lender to Borrower, shall constitute an Event of Default under this Agreement. However:

- a. If the Winterset II Security Instrument imposes the same obligation and provides for a shorter cure period or no cure period for breach of that obligation, then Borrower, in lieu of the above-specified 30-day cure period, shall be allowed, respectively, the same cure period provided for in the Winterset II Security Instrument or no cure period; and
- b. No such notice or cure period set forth in this Section 8 shall apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Agreement, result in harm to Lender, impairment of this Agreement or the RHS guarantee.

9. Remedies of Lender. If an Event of Default under this Agreement has occurred and is continuing, either Lender may, at its option, take any one or more of the following steps, in addition to all other remedies provided at law or in equity:

- a. By mandamus or other proceeding at law or in equity, including but not limited to an action seeking injunctive relief or a declaratory judgment, require Borrower to perform its obligations under this Agreement or enjoin any acts which may be unlawful or in violation of this Agreement.
- b. Declare that an Event of Default has occurred and is continuing under the Winterset II Security Instrument, as authorized by the Winterset II Security Instrument, and exercise any and all remedies available to Lender under the Winterset II Security Instrument and any of the other Loan Documents.
- c. Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations of Borrower under this Agreement.

10. Remedies of RHS. If an Event of Default under this Agreement has occurred and is continuing, RHS, as a third party beneficiary of this Agreement, may by mandamus or other

proceeding at law or in equity, including but not limited to an action seeking injunctive relief or a declaratory judgment, require Borrower to perform its obligations under this Agreement or enjoin any acts which may be unlawful or in violation of this Agreement. RHS may assume the role of Lender if necessary to force Borrower to comply with the terms of this Agreement. If RHS ever assumes the Winterset II Mortgaged Property in the role of a mortgagee-in-possession, this Agreement will remain in force at RHS's sole discretion.

11. Release. Upon termination of this Agreement, Lender shall execute such instruments as Borrower may reasonably request to evidence such termination, so long as such instruments are prepared, delivered and recorded at no expense to Lender.

12. Notices. All notices shall be in writing and shall be deemed to have been sufficiently given or served when personally delivered, deposited in the United States mail, by registered or certified mail, or deposited with a reputable overnight mail carrier which provides delivery of such mail to be traced, addressed as follows:

Lender: Bonneville Mortgage Company
111 Main, Suite 1600
Salt Lake City, Utah 84111
Attn: Brent H. Peterson

With copies to: Kirton McConkie
50 East South Temple, Suite 400
Salt Lake City, Utah 84111
Attn: John B. Lindsay

Borrower: RD ESW, LLC
12289 Stratford Drive
Clive, Iowa 50325
Attn: Jodi Page

With copies to: Hopkins & Huebner, P.C.
2700 Grand Avenue, Suite 111
Des Moines, Iowa 50312-5213
Attn: R. Ronald Pogge

and

National Management Corporation
12289 Stratford Drive
Clive, Iowa 50325
Attn: Aaron Walker

and

Investor Member: CREA ESW, LLC
30 S. Meridian, Suite 400
Indianapolis, Indiana 46204

Such addresses may be changed by notice to the other party given in the same manner provided in this Section.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Winterset II Mortgaged Property is located.

14. Captions, Cross References and Exhibits. The captions assigned to provisions of this Agreement are for convenience only and shall be disregarded in construing this Agreement. Any reference in this Agreement to an "Exhibit", a "Section", a "Subsection" or a "Paragraph" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Agreement, a section of this Agreement, a subsection of the section of this Agreement in which the reference appears and a paragraph of the subsection within this Agreement in which the reference appears. All Exhibits attached to or referred to in this Agreement are incorporated by reference into this Agreement.

15. Number and Gender. Use of the singular in this Agreement includes the plural, use of the plural includes the singular, and use of one gender includes all other genders, as the context may require.

16. Statutes and Regulations. Any reference in this Agreement to a statute or regulation shall include all amendments to and successors to such statute or regulation, whether adopted before or after the date of this Agreement.

17. No Partnership. This Agreement is not intended to, and shall not, create a partnership or joint venture among the parties, and no party to this Agreement shall have the power or authority to bind any other party except as explicitly provided in this Agreement.

18. Successors and Assigns. Borrower may not assign its rights or delegate its obligations under this Agreement without the prior written consent of Lender. Lender, however, may freely assign its rights or delegate its obligations under this Agreement without the consent of Borrower. This Agreement shall be binding upon and shall inure to the benefit of Borrower and

Lender and their respective heirs, successors, and permitted assigns, including any subsequent lender for the duration set forth in Section 7 of this Agreement.

19. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

20. Integration. This Agreement represents the final agreement between the parties with respect to the matters addressed in this Agreement, and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements. There are no unwritten oral agreements between the parties. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement.

21. Waiver; No Remedy Exclusive. Any forbearance by a party to this Agreement in exercising any right or remedy given under this Agreement or existing at law or in equity shall not constitute a waiver of or preclude the exercise of that or any other right or remedy. Unless otherwise explicitly provided, no remedy under this Agreement is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity.

22. Attorneys' Fees. Upon the occurrence of an Event of Default, Lender may employ an attorney or attorneys to protect Lender's rights under this Agreement, and Borrower shall pay Lender reasonable attorneys' fees and costs actually incurred by Lender, whether or not action is actually commenced against Borrower by reason of such breach.

23. Further Assurances and Corrective Instruments. To the extent permitted by law, the parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements to this Agreement and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Agreement. Without limiting the generality of the foregoing, Borrower shall execute such amendments to this Agreement as may be required by RHS in order to ensure the validity of the RHS Guarantee.

24. No Party Deemed Drafter. No party shall be deemed the drafter of this Agreement, and this Agreement shall not be construed against either party as the drafter of the Agreement.

25. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original for all purposes, but all of which taken together shall constitute only one agreement. The production of any executed counterpart of this Agreement shall be sufficient for all purposes without producing or accounting for any other counterpart.

26. **Subordination to Winterset II Security Instrument.** The Agreement shall be subordinate to the Winterset II Security Instrument notwithstanding the order of the recording of this Agreement or Winterset II Security Instrument.

*[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]*

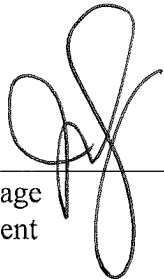
DATED: August 15, 2017.

BORROWER

RD ESW, LLC,
an Iowa limited liability company

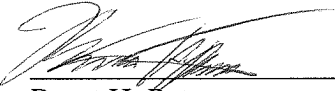
By: ESW I, LLC,
an Iowa limited liability company
Its: Managing Member

By: National Affordable Housing Foundation,
an Iowa Non-Profit Corporation
Its: Sole Member

By:  _____
Jodi Page
Its: President

LENDER

BONNEVILLE MORTGAGE COMPANY,
a Utah corporation

By: 

Brent H. Peterson
President, Multifamily Division

STATE OF IOWA

COUNTY OF POLK

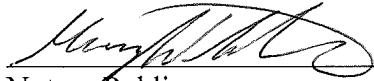
On this 10th day of August, 2017, before me the undersigned, a notary public in and for the State of Iowa, personally appeared Jodi Page, to me personally known, who, being by me duly sworn, did say that s/he is President of National Affordable Housing Foundation, an Iowa Non-Profit Corporation which is the sole member of ESW I, LLC, an Iowa limited liability company which is the Managing Member of RD ESW, LLC, an Iowa limited liability company, executing the foregoing instrument, that the instrument was signed on behalf of the limited liability company, by authority of the limited liability company and the said President acknowledged the execution of the instrument to be the voluntary act and deed of the limited liability company.

Kelly Lynn Karns
Notary Public



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

The foregoing instrument was acknowledged before me this 9th day of August, 2017, by Brent H. Peterson, President, Multifamily Division, Bonneville Mortgage Company, a Utah corporation.



Notary Public

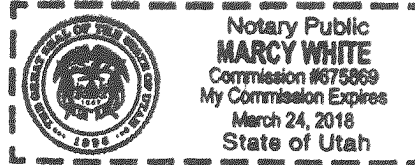


EXHIBIT A

REAL PROPERTY DESCRIPTION

Real property in the City of Winterset, County of Madison, State of Iowa, described as follows:

Lots Twenty-four (24), Twenty-five (25) and Twenty-six (26), and all that part of Lot Twenty-seven (27) which is West of a line described as commencing at the Northeast corner of Lot Twenty-six (26), and running thence South to the South line of said Lot Twenty-seven (27), all in Northwest Development - Plat 1, to the City of Winterset, Madison County, Iowa.