

When Recorded Return to:

VP President, Multifamily  
Utah Housing Corporation  
2479 S. Lake Park Blvd.  
West Valley City, Utah 84120

Tax Parcel I.D. No.: 01-305-0107

*Folio 5621634*

**FIRST AMENDMENT TO  
LOW-INCOME HOUSING CREDIT COMMITMENT AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

This FIRST AMENDMENT TO LOW-INCOME HOUSING CREDIT COMMITMENT AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (this "Amendment") is made as of July 22<sup>nd</sup>, 2014, between **FOXBORO TERRACE ASSOCIATES, L.C.**, a Utah limited liability company ("Project Owner") and **UTAH HOUSING CORPORATION**, a public corporation of the State of Utah ("UHC").

WHEREAS, Project Owner has obtained financing from Oppenheimer Multifamily Housing & Healthcare Finance, Inc., a Delaware corporation ("Lender") for the benefit of the project known as Foxboro Terrace Apartments, ("Project"), which loan is secured by a Multifamily Trust Deed, Assignment of Leases and Rents and Security Agreement (Utah) ("Security Instrument") dated as of July 1<sup>st</sup>, 2014 and recorded in the Office of the County Recorder of Davis County, Utah ("Records") on ~~July~~ 25, 2014, as Entry No. 2814923, in Book 6067, at Page 826-878, and is insured by the United States Department of Housing and Urban Development ("HUD"); and

WHEREAS, Project Owner has received an allocation of Low Income Housing Tax Credits from UHC, and accordingly, UHC required certain restrictions be recorded against the Project; and

WHEREAS, the Project Owner entered into that certain Low-Income Housing Credit Commitment Agreement and Declaration of Restrictive Covenants ("Agreement") with respect to the Project, as more particularly described in Exhibit A attached hereto, dated as of September 14, 2005, and recorded on September 29, 2005 in the official records of the County Recorder of Davis County, Utah, as Entry No. 2109453, in Book 3881, beginning at Page 98; and

WHEREAS, HUD requires as a condition of its insuring Lender's financing to the Project, that the lien and covenants of the Agreement be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, UHC has agreed to subordinate the Agreement to the lien of the Mortgage Loan in accordance with the terms of this Amendment.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to amend and restate, in its entirety, paragraph 15 of the Agreement to read as follows:

15. HUD Subordination.

(a) In the event of any conflict between any provision contained elsewhere in this Agreement and any provision contained in this paragraph 15, the provision contained in this paragraph 15 shall govern and be controlling in all respects.

(b) The following terms shall have the following definitions:

“Code” means the Internal Revenue Code of 1986, as amended.

“HUD” means the United States Department of Housing and Urban Development.

“HUD Regulatory Agreement” means the Regulatory Agreement between Project Owner and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“Lender” means Oppenheimer Multifamily Housing & Healthcare Finance, Inc., its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to the Project Owner pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act of 1934, as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Residual Receipts” has the meaning specified in the HUD Regulatory Agreement.

“Security Instrument” means the mortgage or deed of trust from Project Owner in favor of Lender, as the same may be supplemented, amended or modified.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in this Agreement to the contrary, except the requirements in 26 U.S.C. 42(h)(6)(E)(ii), to the extent applicable, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). Project Owner covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or this Agreement. In the event of any conflict between the provisions of this Agreement and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits UHC’s ability to enforce the terms of this Agreement, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Project Owner represents and warrants that to the best of Project Owner’s knowledge this Agreement imposes no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In accordance with 26 U.S.C. 42(h)(6)(E)(i)(1), in the event of foreclosure (or deed in lieu of foreclosure), this Agreement (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii) above, or as otherwise approved by HUD.

(e) Project Owner and UHC acknowledge that Project Owner’s failure to comply with the covenants provided in this Agreement does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for UHC’s reporting requirement, in enforcing this Agreement, UHC will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available Surplus Cash, if the Project Owner is a for-profit entity;
- ii. Available distributions and residual receipts authorized for release by HUD, if the Project Owner is a limited distribution entity; or
- iii. Available residual receipts authorized by HUD, if the Project Owner is a non-profit entity.

(g) For so long as the Mortgage Loan is outstanding, Project Owner and UHC shall not further amend this Agreement, with the exception of clerical errors or

administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, UHC may require the Project Owner to indemnify and hold UHC harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against UHC relating to the subordination and covenants set forth in this Agreement, provided, however, that Project Owner's obligation to indemnify and hold UHC harmless shall be limited to available surplus cash and/or residual receipts of the Project Owner.

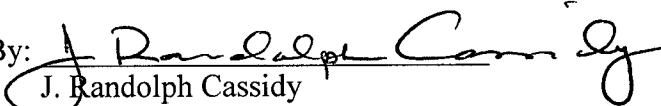
(i) Notwithstanding anything to the contrary contained herein, it is not the intent of any of the parties hereto to cause a recapture of the Low Income Housing Tax Credits or any portion thereof related to any potential conflicts between the HUD Requirements and this Agreement. Project Owner represents and warrants that to the best of Project Owner's knowledge the HUD Requirements impose no requirements which may be inconsistent with full compliance with this Agreement. The acknowledged purpose of the HUD Requirements is to articulate requirements imposed by HUD, consistent with its governing statutes, and the acknowledged purpose of this Agreement is to articulate requirements imposed by Section 42 of the Code. In the event an apparent conflict between the HUD Requirements and this Agreement arises, the parties and HUD will work in good faith to determine which federally imposed requirement is controlling. It is the primary responsibility of the Project Owner, with advice of counsel, to determine that it will be able to comply with the HUD Requirements and its obligations under this Agreement.

[Signatures on following pages]

PROJECT OWNER:


FOXBORO TERRACE ASSOCIATES, L.C.,  
a Utah limited liability company

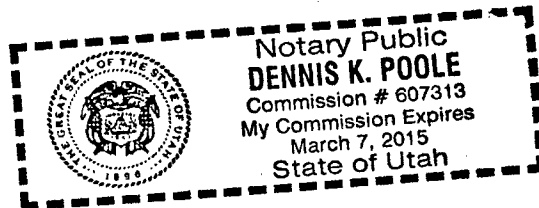
By: Foxboro Terrace Management, L.C.,  
a Utah limited liability company  
Its: Manager

By:   
J. Randolph Cassidy  
Manager

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

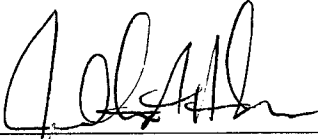
The foregoing instrument was acknowledged before me this 23 day of July, 2014, by J. Randolph Cassidy, a Manager of Foxboro Terrace Management, L.C., a Utah limited liability company, the Manager of Foxboro Terrace Associates, L.C., a Utah limited liability company.

  
NOTARY PUBLIC



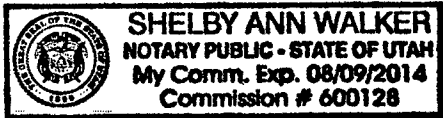
UHC:

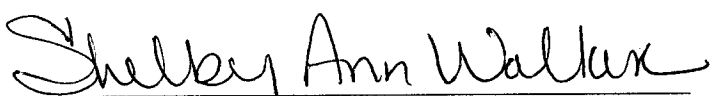
UTAH HOUSING CORPORATION,  
a public corporation of the State of Utah

By:   
Jonathan A. Hanks  
Senior V.P. & COO

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

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of July, 2014, by Jonathan A. Hanks, the Senior V.P. & COO of UTAH HOUSING CORPORATION, a public corporation of the State of Utah.



  
NOTARY PUBLIC

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

Real Property located in Davis County State of Utah, and described as:

Lot 107A, Foxboro plat 1A Amended, according to the Official plat thereof on file and of record in the Davis County Recorder's Office.

Said property is also known by the street address of:  
882 West Foxboro Drive, North Salt Lake, UT 84054