

E 2814964 B 6067 P 1141-1147
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
7/25/2014 3:10:00 PM
FEE \$22.00 Pgs: 7
DEP eCASH REC'D FOR FIRST AMERICAN TITLE

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

Fatedo 5621639

HUD AMENDMENT TO TAX REGULATORY AGREEMENT

This AMENDMENT TO TAX REGULATORY AGREEMENT is made as of July 22, 2014, by FOXBORO TERRACE ASSOCIATES, L.C., a Utah limited liability company ("Borrower"), WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee ("Trustee"), and UTAH HOUSING CORPORATION, an independent body politic and corporate, constituting a public corporation of the State of Utah ("UHC").

WHEREAS, Borrower has obtained financing from Oppenheimer Multifamily Housing & Healthcare Finance, Inc., a Pennsylvania 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 ~~15~~¹⁹ 2014, and recorded in the Recorder's Office of Davis County, State of Utah ("Records") on July ~~25~~²⁵ 2014, as Entry No. 2814923, in Book 6067 at Page 826878 and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, Borrower previously received tax-exempt bond financing from UHC, and in accordance therewith, UHC required certain restrictions be recorded against the Project; and

WHEREAS, Borrower entered into that certain Tax Regulatory Agreement ("Restrictive Covenants") with respect to the Project, as more particularly described in Exhibit A attached hereto, dated as of May 1, 2004, and recorded in the Official Records of the Davis County Recorder on May 3, 2004, as Entry No. 1983525, in Book 3531, beginning at page 1273;

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

WHEREAS, UHC has agreed to subordinate the Restrictive Covenants 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 as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Amendment, the provision contained in this Amendment shall govern and be controlling in all respects as set forth more fully herein.

(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 Borrower 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., a Pennsylvania corporation, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the Borrower 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 Borrower 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 the Restrictive Covenants to the contrary, the provisions thereof 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"). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the UHC's ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower's knowledge

the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(e) Borrower and UHC acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants 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 the Restrictive Covenants 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 Borrower is a for-profit entity;
- ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity.

(g) For so long as the Mortgage Loan is outstanding, Borrower and UHC shall not further amend the Restrictive Covenants, 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, the Borrower shall 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 the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold UHC harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

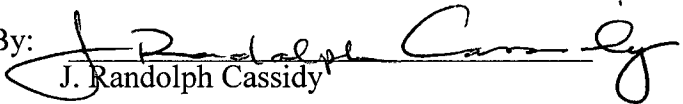
(i) No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.

[Signatures on following pages.]

BORROWER:


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

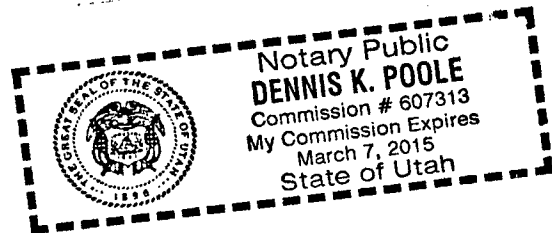
By its Manager, Foxboro Terrace Management,
L.C., a Utah limited liability company

By: 
J. Randolph Cassidy

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

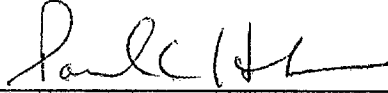
The foregoing instrument was acknowledged before me this 23 day of July, 2014, by J. Randolph Cassidy, a Manager of Foxboro Terrace Management, L.C., a Utah limited liability company, the Manager of FOXBORO TERRACE ASSOCIATES, L.C., a Utah limited liability company.


NOTARY PUBLIC



TRUSTEE:

WELLS FARGO BANK, NATIONAL
ASSOCIATION as Trustee

By: 
Name: Paul C. Hoek
Title: Vice President

STATE OF Minnesota)
: ss.
COUNTY OF Hennepin)

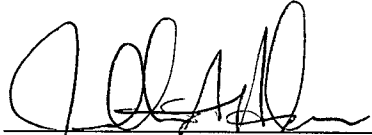
The foregoing instrument was acknowledged before me this 24th day of July, 2014, by Paul C. Hoek as Vice President of WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE.




NOTARY PUBLIC

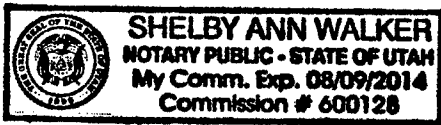
UHC:

UTAH HOUSING CORPORATION

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

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

The foregoing instrument was acknowledged before me this 22nd day of July, 2014, by Jonathan A. Hanks, the Senior V.P. and C.O.O. of UTAH HOUSING CORPORATION, a public corporation of the State of Utah.



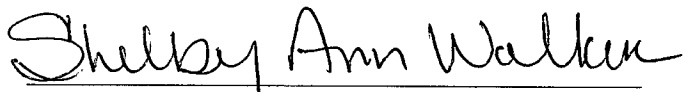

NOTARY PUBLIC

EXHIBIT "A"

LEGAL DESCRIPTION

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

Lot 107A, Foxboro Plat IA 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