

SNDA

U.S. Department of Housing  
and Urban Development  
Office of Housing  
Federal Housing Commissioner

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Faboo 5621634

(Space above this line for Recorder's Use)

Tax Parcel ID. 01-305-0107

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

THIS AGREEMENT, made as of this 23<sup>rd</sup> day of July, 2014, by and between Foxboro Terrace Associates, L.C., a Utah limited liability company ("Owner"), as Property Owner under the Marketing and Promotional Agreement hereinafter described, and **Qwest Corporation, d/b/a CenturyLink QC** ("Provider"), as a party under the Qwest Broadband Services & Marketing Agreement, in favor of Oppenheimer Multifamily Housing & Healthcare Finance, Inc., a Pennsylvania corporation ("FHA Lender"), the owner and holder of the Mortgage hereinafter described.

**WITNESSETH:**

WHEREAS, Owner has executed, or will execute that certain Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement, dated as of July 1, 2014, (the "Mortgage"), in favor of FHA Lender and covering certain real property (the "Property") located in the County of Davis, State of Utah, with a legal description as set forth in Exhibit "A" attached hereto and incorporated herein by this reference, and covering the improvements situated thereon (the "Improvements"); and

WHEREAS, Owner and Provider entered into that certain unrecorded Qwest Broadband Services & Marketing Agreement dated December 2, 2004, and all amendments thereto, as evidenced in part by that certain Addendum to the Qwest Broadband Services & Marketing Agreement recorded in the official records of the County Recorder of Davis County, Utah as Entry No. 2114802, in Book 3893, at Page 187, on October 18, 2005 (the "Services Agreement"), covering certain Improvements for the term and upon the conditions set forth therein; and

WHEREAS, the parties hereto now desire to enter into this Agreement to establish certain rights and obligations with respect to their interests, and to provide for various contingencies as hereinafter set forth.

NOW, THEREFORE, in consideration for the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual benefits to accrue to the parties hereto, it is hereby declared, understood and agreed that the Services Agreement, all terms and conditions set forth in the Services Agreement, the property interests and estates created thereby, and the priorities, rights, privileges and powers of Provider and Owner thereunder shall be and the same are hereby, and with full knowledge and understanding of the effect thereof, unconditionally made subject and subordinate to the lien and charge of the Mortgage, all terms and conditions contained therein, any renewals, extensions, modifications or replacements thereof, and the rights, privileges and powers of the trustee and FHA Lender thereunder, and shall hereafter be junior and inferior to the lien and charge of the Mortgage. The parties further agree as follows:

1. It is expressly understood and agreed that this Agreement shall supersede, to the extent inconsistent herewith, the provisions of the Services Agreement relating to the subordination of the Services Agreement and the property interests and estates created thereby to the lien or charge of the Mortgage.
2. FHA Lender consents to the Services Agreement.
3. In the event FHA Lender or any other purchaser at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Owner under the Services Agreement by reason of any foreclosure of the Mortgage or the acceptance by FHA Lender of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:
  - (a) Provider shall be bound to FHA Lender or such other purchaser under all of the terms, covenants and conditions of the Services Agreement for the remaining balance of the term thereof, with the same force and effect as if FHA Lender or such other purchaser were the Owner under such Services Agreement, and Provider does hereby agree to attorn to FHA Lender or such other purchaser in the place of Owner, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties to this Agreement, immediately upon FHA Lender or such other purchaser succeeding to the interest of Owner under the Services Agreement.
  - (b) Subject to the observance and performance by Provider of all the terms, covenants and conditions of the Services Agreement on the part of the Provider to be observed and performed, FHA Lender or such other purchaser shall recognize the estate of Provider under all of the terms, covenants and conditions of the Services Agreement for the remaining

balance of the term (as the same may be extended in accordance with the provisions of the Services Agreement) with the same force and effect as if FHA Lender or such other purchaser were the Owner under the Services Agreement and the Services Agreement shall remain in full force and effect and shall not be terminated, except in accordance with the terms of the Services Agreement or this Agreement; provided, however, that FHA Lender or such other purchaser shall not be (i) liable for any act or omission of Owner or any other prior owner, (ii) obligated to cure any defaults of Owner or any other prior owner under the Services Agreement which occurred prior to the time that FHA Lender or such other purchaser succeeded to the interest of Owner or any other prior owner under the Services Agreement, (iii) subject to any offsets or defenses which Provider may be entitled to assert against Owner or any other prior owner, or (iv) bound by any amendment or modification of the Services Agreement made without the written consent of FHA Lender or such other purchaser.

- (c) Provider hereby agrees prior to exercising any right granted it under the Services Agreement, or which it might otherwise have under applicable law, to terminate the Services Agreement on account of a default of Owner thereunder or the occurrence of any other event, Provider will give to FHA Lender prior written notice of its intent to terminate, which notice shall include a statement of the default or event on which such intent to terminate is based. Thereafter, Provider shall not take any action to terminate the Services Agreement if FHA Lender (a) within thirty (30) days after service of such written notice on FHA Lender by Provider of its intention to terminate the Services Agreement, shall cure such default or event if the same can be cured by the payment or expenditure of money, or (b) shall diligently take action to obtain possession of the premises (including possession by receiver) and to cure such default or event in the case of a default or event which cannot be cured unless and until FHA Lender has obtained possession, but in no event to exceed ninety (90) days after service of such written notice on FHA Lender by Provider of its intention to terminate.
4. Owner and Provider hereby certify to FHA Lender that the Services Agreement as previously submitted to FHA Lender has not been further amended.
  5. For the purposes of facilitating FHA Lender's rights hereunder, FHA Lender shall have, and for such purposes is hereby granted by Owner and Provider, the right to enter upon the Property and the Improvements thereon for the purpose of effecting any such cure.
  6. Provider hereby agrees to give to FHA Lender concurrently with the giving of any notice of default under the Services Agreement, a copy of such notice by mailing the same to FHA Lender in the manner set forth herein below, and no such notice given to Owner which is not at or about the same time also given to FHA Lender shall be valid or effective against FHA Lender for any purpose.

7. Subordination of Services Agreement to Mortgage and Regulatory Agreements and Regulation by the U.S. Department of Housing and Urban Development ("HUD").
- (a) The Services Agreement and all estates, rights, options, liens and charges therein contained or created under the Services Agreement are and shall be subject and subordinate to the lien or interest of (i) the Mortgage on the Owner's interest in the Property in favor of FHA Lender, its successors and assigns insofar as it affects the real and personal property comprising the Property (and not otherwise owned, leased or licensed by Provider) or located thereon or therein, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances made or to be made thereunder, to the full extent of amounts secured thereby and interest thereon, and (ii) that certain Regulatory Agreement for Multifamily Housing Projects between Lessor and HUD to be recorded against the Property.
  - (b) The parties to the Services Agreement agree to execute and deliver to FHA Lender and/or HUD such other instrument or instruments as the FHA Lender and/or HUD, or their respective successors or assigns, shall reasonably request from time to time to reconfirm the status of the Services Agreement and to effect and/or confirm the subordination of the Services Agreement to the lien of the Mortgage and the above-described Regulatory Agreements. To the extent that any provision of the Services Agreement shall be in conflict with the HUD Program Obligations (as such term is defined below), the HUD Program Obligations shall be controlling.
  - (c) In the event HUD, at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Owner under the Services Agreement by reason of any foreclosure of the Mortgage or the acceptance by HUD of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:
    - (i) HUD can terminate the Services Agreement for any violation of the Services Agreement that is not cured within any applicable notice and cure period given in accordance with the terms of the Services Agreement; otherwise, HUD shall recognize the interests and estate of Provider under all of the terms, covenants and conditions of the Services Agreement for the remaining balance of the term (as the same may be extended in accordance with the provisions of the Services Agreement ) with the same force and effect as if HUD were the Owner under the Services Agreement and the Services Agreement shall remain in full force and effect and shall not be terminated, except in accordance with the terms of the Services Agreement or this Agreement,

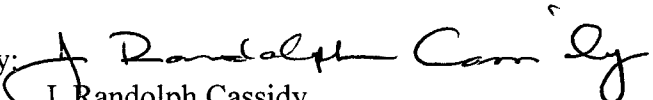
- (ii) As used in this Agreement "HUD Program Obligations" shall mean all applicable statutes and regulations, including all amendments to such statutes and regulations, as they become effective, and all applicable requirements in HUD Handbooks, Notices and Mortgagee Letters that apply to the Property, including all updates and changes to such Handbooks, Notices and Mortgagee Letters that apply to the Property, except that changes subject to notice and comment rulemaking shall become effective upon completion of the rulemaking process.
  - (d) To the extent there is any inconsistency between the terms of this Subordination, Non Disturbance and Attornment Agreement, and the Services Agreement, the terms of this Subordination, Non Disturbance and Attornment Agreement shall be controlling.
8. For purposes of any notices to be given to FHA Lender hereunder, the same shall be sent by U.S. certified mail, return receipt requested, postage prepaid, to FHA Lender at the following address:
- OPPENHEIMER MULTIFAMILY HOUSING  
& HEALTHCARE FINANCE, INC.  
1180 Welsh Road, Suite 210  
North Wales, PA 19454
- or to such other address as FHA Lender may hereafter notify Provider in writing by notice sent to Provider as aforesaid at Provider's address at the Property, or such other address as FHA Lender may hereafter be advised of in writing by notice sent to FHA Lender as aforesaid.
- 9. The agreements contained herein shall run with the land and shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, successors and assigns of the parties hereto.
  - 10. This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute a single instrument.
  - 11. This Agreement shall, in all respects, be governed by and construed and interpreted in accordance with the laws of the State of Utah.

**[SEE ATTACHED SIGNATURE PAGES]**

**OWNER:**

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

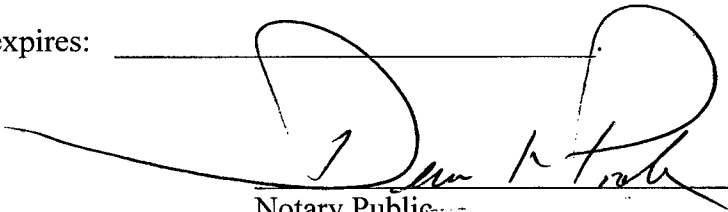
By its Manager, Foxboro Terrace Management,  
L.C., a Utah limited liability company

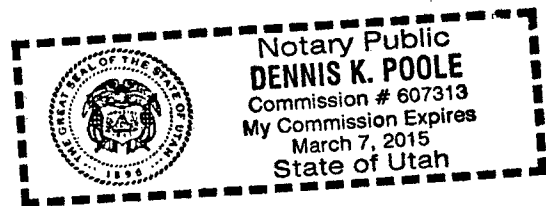
By:   
J. Randolph Cassidy

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, an authorized Manager of Foxboro Terrace Management, L.C., a Utah limited liability company, the Manager of Foxboro Terrace Apartments, L.C, a Utah limited liability company.

Witness my hand.

My commission expires: \_\_\_\_\_  
  
Notary Public



**PROVIDER:**

**Qwest Corporation, d/b/a CenturyLink QC**

By: Laurence Walters  
Name: [Signature]  
Title: VP/GM Utah CenturyLink

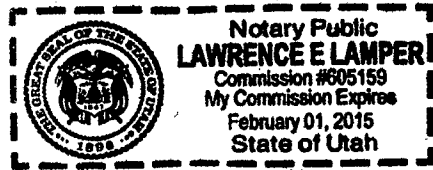
STATE OF Utah )  
COUNTY OF Salt Lake ) ss.

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of July, 2014, by \_\_\_\_\_ as \_\_\_\_\_ of Qwest Corporation, d/b/a CenturyLink QC.

Witness my hand and official seal.

My commission expires: 2-1-15

Laurence E. Lamper  
Notary Public







**EXHIBIT A**

**LEGAL DESCRIPTION**

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

LOT 107 A, FOXBORO PLAT 1A AMENDED, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE DAVIS COUNTY RECORDER'S OFFICE