

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.: 12-066-0058

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

This HUD AMENDMENT TO LOW-INCOME HOUSING CREDIT COMMITMENT AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (“Amendment”) is made as of March _____, 2012, between OAKSTONE II, L.C., a Utah limited liability company (“Project Owner”) and UTAH HOUSING CORPORATION, a public corporation of the State of Utah, formerly known as Utah Housing Finance Agency (the “Agency”).

WHEREAS, Project Owner has obtained financing from Oak Grove Commercial Mortgage, LLC, a Delaware limited liability company (the “Lender”) for the benefit of the project known as County Oaks, more particularly described in Exhibit “A” attached hereto (the “Project”), which loan is secured by a Deed of Trust (“Security Instrument”) dated as of March 1, 2012 and recorded in the Office of the County Recorder of Davis County, Utah (the “Records”) concurrently herewith, and is insured by the United States Department of Housing and Urban Development (“HUD”);

WHEREAS, Project Owner has received an allocation of Low Income Housing Tax Credits from the Agency and in connection therewith, the Agency has required certain land-use restrictions be recorded against the Project;

WHEREAS, Project Owner entered into that certain Low-Income Housing Credit Commitment Agreement and Declaration of Restrictive Covenants ("Restrictive Covenants") with respect to the Project, dated as of December 27, 2000, and recorded on December 29, 2000, in the official records of the County Recorder of Davis County, Utah, in Book 2731, beginning at Page 415;

WHEREAS, HUD is requiring that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Agency 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 to amend the Restrictive Covenants by adding the following new Section 31 to the Restrictive Covenants as follows:

Section 31.

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Section 31, the provision contained in this Section 31 shall govern and be controlling in all respects.

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

"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 Oak Grove Commercial Mortgage, LLC, 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 the Restrictive Covenants to the contrary, except for the requirements in 26 U.S.C. 42(h)(6)(E)(ii), the provisions of the Restrictive Covenants are expressly subordinate to (i) the Security Instrument, (ii) the HUD Regulatory Agreement and (iii) Program Obligations. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the Security Instrument, HUD Regulatory Agreement, or Program Obligations, the provisions of the Mortgage Loan Documents and Program Obligations shall control and supersede the enforcement of the Restrictive Covenants.

(d) In the event of foreclosure, the Restrictive Covenants (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 the Agency acknowledge that Project Owner’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 terms of the Security Instrument, the HUD Regulatory Agreement, or any other document relating to the Mortgage Loan to Project Owner for the Project, provided that, nothing herein limits the Agency’s ability to enforce the terms of the Restrictive Covenants to the extent not in conflict with the Mortgage Loan Documents or Program Obligations.

(f) Except for the Agency’s reporting requirement to the Internal Revenue Service, in enforcing the Restrictive Covenants, the Agency will not file any claim against the Project or 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 for release by HUD, if the Project Owner is a non-profit entity.

(g) For so long as the Mortgage Loan is outstanding, Project Owner and the Agency shall not further amend the Restrictive Covenants without HUD’s prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Agency may require the Project Owner to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against the Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Project Owner's obligation to indemnify and hold the Agency harmless shall be limited to available Surplus Cash and/or Residual Receipts of the Project Owner.

(i) Project Owner and the Agency further agree that if at any time any covenant or restriction of this Section 31 shall be determined by the Internal Revenue Service to be an event invalidating or terminating the award of low-income housing tax credits awarded to the Project, then in such event such covenant or restriction provided herein shall immediately and automatically terminate.

(j) The Project Owner acknowledges that it requested the Agency to adopt this Section 31 in order to satisfy certain obligations of the Project Owner under the Mortgage Loan Documents, and that the Agency has not made any representations or statements with respect to the Project Owner's entitlement to the allocation of low-income housing tax credits for the Project as a result of this Section 31. The Project Owner represents that it has independently reviewed the Mortgage Loan Documents to ensure their consistency with the Restrictive Covenants. The Project Owner agrees to release the Agency, its officers, trustees, employees and agents from any claim, loss, liability, demand or judgment incurred by or asserted against the Project Owner resulting from or relating to the allocation of low-income housing tax credits, or the recapture thereof by the Internal Revenue Service, including without limitation as a result of this Section 31. Further, the Project Owner agrees, subject to the provisions of paragraph (h) above, to defend, indemnify and hold the Agency, its officers, trustees, employees and agents harmless from any claim, loss, liability, demand, judgment or cost (including without limitation reasonable attorneys' fees) arising out of this Section 31.


[Signatures on following pages]

PROJECT OWNER:

OAKSTONE II, L.C., a Utah limited liability company

By: Clearfield Affordable Housing II, L.C.,
a Utah limited liability company
Its: Managing Member

By: Cowboy Partners, L.C., a Utah
limited liability company
Its: Manager

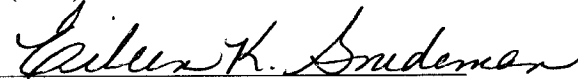
By: 
Name: Mark R. Cornelius
Its: Vice-President

STATE OF UTAH

COUNTY OF SALT LAKE

The foregoing instrument was acknowledged before me this 26 day of MARCH, 2012, by Mark R. Cornelius, the Vice-President of Cowboy Partners, L.C., a Utah limited liability company, the Manager of Clearfield Affordable Housing II, L.C., a Utah limited liability company, the Managing Member of Oakstone II, L.C., a Utah limited liability company.

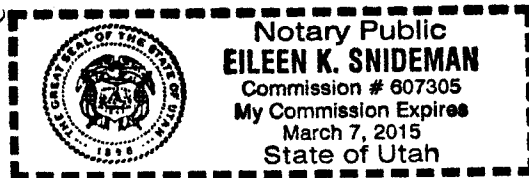
(Seal)



Notary Public

Printed Name: _____

My Commission Expires:



AGENCY:

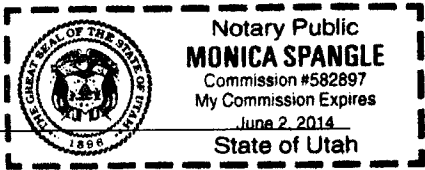
UTAH HOUSING CORPORATION, an independent state agency and a public body politic and corporate duly organized and existing under the laws of the State of Utah

By: [Signature]
Name: _____
Its: _____

STATE OF UTAH

COUNTY OF SALT LAKE

The foregoing instrument was acknowledged before me this 26 day of March, 2012, by Grant S. Whitaker of **UTAH HOUSING CORPORATION**, an independent state agency and a public body politic and corporate duly organized and existing under the laws of the State of Utah.

(Seal) 

Notary Public

Printed Name: Monica Spangle

My Commission Expires:
June 2 2012

EXHIBIT "A"

LEGAL DESCRIPTION

A part of the Southeast quarter of Section 12, Township 4 North, Range 2 West, Salt Lake Base and Meridian, U.S. survey. Beginning at a point being 997.11 feet North 00°06'05" East along the Section line and 33.00 feet West of the Southeast corner of Section 12 (Basis of Bearing: North 00°06'05" East from the Southeast corner of Section 12 along the Section line to the East quarter corner); thence as follows: North 89°44'36" West 495.00 feet; thence North 00°06'05" East for 321.07 feet; thence South 89°44'36" East 495.00 feet to the West line of 1000 East Street; thence South 00°06'05" West 321.07 feet along said street to the point of Beginning.

This document was drafted by:
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