
FIRST SUPPLEMENTAL TAX AGREEMENT

by and among

**ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS,
as Issuer**

and

**ACACIA CREEK, A MASONIC SENIOR LIVING COMMUNITY AT UNION CITY,
as Borrower**

and

**MASONIC HOMES OF CALIFORNIA,
as Guarantor**

and

**WELLS FARGO BANK, N.A.,
As Trustee**

Dated January __, 2020

Relating to the Deemed Reissuance of

**ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS
VARIABLE RATE REFUNDING REVENUE BONDS
(Acacia Creek At Union City)
Series 2013A**

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EXHIBITS

Exhibit A—Form 8038 for Reissued Series 2013A Bonds

FIRST SUPPLEMENTAL TAX AGREEMENT

This First Supplemental Tax Agreement (this “Agreement”) is entered into by and among ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS (the “Issuer”), ACACIA CREEK, A MASONIC SENIOR LIVING COMMUNITY AT UNION CITY (“Acacia Creek”), MASONIC HOMES OF CALIFORNIA (the “Guarantor”) and WELLS FARGO BANK, NATIONAL ASSOCIATION, as trustee (the “Trustee”) in connection with the deemed reissuance of the Issuer’s Variable Rate Refunding Revenue Bonds (Acacia Creek at Union City) Series 2013A (the “Series 2013A Bonds”) today. This Agreement supplements the Tax Agreement dated October 29, 2013 (the “Original Tax Agreement”) relating to the Series 2013A Bonds. (Acacia Creek and Guarantor are sometimes hereinafter collectively referred to as the “Borrowers” and each separately as a “Borrower.”)

The Series 2013A Bonds are treated as reissued today and are referred to in this Agreement as the “Reissued Series 2013A Bonds”.

This Agreement concerns the requirements that must be met for interest on the Reissued Series 2013A Bonds to qualify as tax-exempt for federal income tax purposes. It has several purposes. First, it sets forth the reasonable expectations and other representations of the Issuer and the Borrower about the Reissued Series 2013A Bonds that are needed to establish that the Reissued Series 2013A Bonds meet those requirements today. Second, it sets forth agreements of the Issuer and the Borrowers about actions after today that are needed for the Reissued Series 2013A Bonds to continue to meet those requirements. Third, it provides a record that the Issuer and the Borrowers have been informed of the nature of their continuing obligations in connection with the Reissued Series 2013A Bonds.

The Issuer and the Borrowers understand that this Agreement is being relied on by Foley & Lardner LLP in rendering its opinion on today about whether interest on the Reissued Series 2013A Bonds is tax-exempt.

I. REPRESENTATIONS

1. General nature of representations made.

1.1. The Issuer’s representations.

Except for the Issuer’s representations in Section I, 2, the Issuer’s representations in this Agreement are based solely on representations made by the Borrowers in this Agreement and in the bond documents related to the Reissued Series 2013A Bonds. To the extent the Issuer is relying on the representations of the Borrowers, the Issuer is not aware of any facts or circumstances that would cause it to question those representations. The undersigned is duly authorized to execute and deliver this Agreement.

1.2. The Borrower’s representations.

The undersigned Chief Financial Officer represents that he has examined the Original Tax Agreement and is generally familiar with the representations made by the

Borrowers therein. The undersigned is not aware of any facts or circumstances that would cause him to question the representations made by the Borrowers in the Original Tax Agreement. Any representation made by the Borrowers about their reasonable expectations includes a representation that they have not entered into any contract or other arrangement that is inconsistent with that representation. The undersigned represents that he is duly authorized to execute and deliver this Agreement.

2. Status of the Issuer.

The Issuer is a public entity of the State of California formed pursuant to a Joint Exercise of Powers Agreement dated as of April 1, 1990, and revised as of September 18, 1990 and June 9, 1992 under the Joint Exercise of Powers Act, Section 6500 et seq. of the California Government Code (the “Act”) and that the Issuer is thereunder authorized to issue bonds to provide financing for qualifying projects, and to enter into financing documents with others for the purpose of receiving revenues to pay the bonds so authorized.

4. Status of the Borrowers.

Each Borrower represents that it is, and has at all times since October 29, 2013, been, an organization described in section 501(c)(3) of the Code. Acacia Creek and the Guarantor have respectively received determination letters dated July 10, 2007, and December 11, 1941, from the Internal Revenue Service to that effect, which are attached as Exhibit A to the Original Agreement, and the determination letters have not been adversely modified, limited, or revoked. Each Borrower represents that it is, and has at all times since October 29, 2013 been, in compliance with all terms, conditions and limitations of its exemption. The facts and circumstances that form the basis of the foregoing letters as represented to the Internal Revenue Service continue substantially to exist. Each Borrower represents that it is, and has at all times since October 29, 2013 been, exempt from federal income taxes under section 501(a) of the Code and is not a private foundation under section 509(a) of the Code. No proceedings are pending or, to the knowledge of ta Borrower, threatened in any way contesting or affecting the status of such Borrower as an organization described in section 501(c)(3) of the Code (a “501(c)(3) organization”).

5. Affirmation of representations and agreements in the Original Tax Agreement.

Each Borrower represents, except as otherwise provided in this Agreement, that all representations that it made in Article I of the Original Tax Agreement are, and have at all times since October 29, 2013 been, true and correct.¹ Each Borrower represents that it has complied with all agreements set forth in the Original Tax Agreement. The Borrowers covenant and agree that all covenants in the Original Tax Agreement also apply to the Reissued Series 2013A Bonds treated as a separate refunding bond issue by substituting the “Reissued Series 2013A Bonds” for the “Bonds” and “January __, 2020” for “October 29, 2013”, except as otherwise expressly provided in this Agreement or except as context otherwise clearly requires.

¹ Except that the Guarantor no longer appoints all members of the Acacia Creek board of directors. Now, by law, the residents have authority to appoint one member and, by agreement with Acacia Creek, the residents have the right to appoint one other member, for a total of two of ten board members.

6. Description of the reissuance transaction.

6.1. Amendment of the Indenture of Trust, Loan Agreement and other bond documents.

The Issuer and the Borrower are today effecting amendments of the Bond Trust Indenture dated as of October 1, 2013, relating to the Series 2013A Bonds (the “Indenture”). The Borrowers represent that the Series 2013A Bonds in the principal amount of \$87,235,533 are outstanding today. These amendments will, among other things, provide for a new index rate period, change the method of determining the rate of interest on the Bonds, and certain other matters. Based on the advice of Bond Counsel, the Issuer and the Borrowers will treat these amendments as resulting in a “reissuance” of the Series 2013A Bonds, and, accordingly, will consistently treat the outstanding Series 2013A Bonds as being redeemed and reissued for an amount equal to their outstanding principal amount today. The Issuer and the Borrowers will treat the “sale date” of the Reissued Series 2013A Bonds as occurring today.

The Borrowers represent that the Reissued Series 2013A Bonds were sold by the Remarketing Agent to Banc of America Public Capital Corp on the date hereof for a purchase price of \$87,235,533.

6.2. Proceeds of the Reissued Series 2013A Bonds; Application of Equity Contribution. Prior to the reissuance of the Reissued Series 2013A Bonds, the Borrowers represent that they had outstanding \$87,235,533 principal amount of Series 2013A Bonds, that on the date hereof, a portion of the Series 2013A Bonds, in the principal amount of \$12,187,786, has been retired by the Borrowers out of equity.

On the date hereof, the Borrowers represent that all of the proceeds of the Reissued Series 2013A Bonds in the principal amount of \$87,235,533 are being used to refund the Series 2013A Bonds of the same principal amount.

The Borrowers represent that all Costs of Issuance incurred in connection with the reissuance today of the Reissued Series 2013A Bonds are being paid by the Borrowers from equity of the Borrowers.

6.3. Public approval of the Reissued Series 2013A Bonds.

Because the Reissued Series 2013A Bonds will be treated as a current refunding of the outstanding Series 2013A Bonds that does not increase the amount of the Series 2013A Bonds, the Issuer and the Borrowers are advised by Bond Counsel that no additional public approval is required.

6.4. Terms of the Reissued Series 2013A Bonds.

The terms of the Reissued Series 2013A Bonds are as described in Bond Indenture, as amended by the First Supplemental Bond Indenture and the Second Supplemental Bond Indenture.

6.5. Reasonable expectation that no other obligations need to be treated as part of the same “issue” as the Reissued Series 2013A Bonds.

The Reissued Series 2013A Bonds will be treated as “sold” on the date of their reissuance, which is today. No other obligations reasonably expected to be paid from the same source of funds have been sold since December __, 2019 and the Borrowers reasonably expect that no such obligations will be sold before January __, 2020. Accordingly, the Issuer and the Borrowers intend to treat the Reissued Series 2013A Bonds as a single “issue” and that no other obligations will be part of this “issue”.

6.6. Interest rate hedges.

Neither the Issuer nor the Borrowers have entered into any contract primarily to modify the risk of interest rate changes with respect to the Reissued Series 2013A Bonds.

6.7. Form 8038.

The information in the Internal Revenue Service Form 8038 for the Reissued Series 2013A Bonds attached to this Agreement as Exhibit A is true and correct.

7. Payment on the Reissued Series 2013A Bonds.

The Borrowers reasonably expect that all payments of principal and interest on the Reissued Series 2013A Bonds will be made no later than the date actually and unconditionally due and that the Borrowers will be able to provide for these payments from current revenues of the Borrowers. The Borrowers do not reasonably expect that there will be any mandatory redemptions of the Reissued Series 2013A Bonds other than mandatory redemptions for which the dates and amounts are fixed and determinable on the Issue Date.

8. [Reserved]

9. Private business use of Financed Property.

The Issuer and the Borrowers intend that a pro rata portion of the property and purposes financed with the proceeds of the Bonds is treated as financed with proceeds of the Reissued Series 2013A Bonds. The Borrower represents that no portion of the Financed Property has been used since October 29, 2013, and reasonably expects that no portion of the Financed Property will be used, for a private business use by any person other than a 501(c)(3) organization, such as a Borrower or a state or local government, such as the Issuer. For purposes of this representation private business use means any actual or beneficial use of Financed Property pursuant to a lease, management contract, research agreement, joint venture agreement, incentive payment contract, output contract, or any other arrangement that conveys special legal entitlements for beneficial use except (a) contracts providing for use of not more than 50 days; (b) management contracts that meet the safe harbors set forth in Internal Revenue Service Rev. Proc. 2017-13 and (c) research agreements that meet the safe harbors set forth in Internal Revenue Service Rev. Proc. 97-14. Use by an individual that is not engaged in a trade or business, however, is not treated as private business use.

10. Unrelated trade or business use of Financed Property.

The Borrowers represent that no portion of the Financed Property has been used since October 29, 2013, and reasonably expects that no portion of the Financed Property will be used in an unrelated trade or business (within the meaning of section 513 of the Code) of any 501(c)(3) organization, including the Borrowers.

11. Reasonable expectation that no other amounts need to be treated as Gross Proceeds.

Other than the Funds and Accounts, neither the Issuer nor the Borrowers (i) have pledged, or reasonably expect to pledge, any funds to the payment of debt service on the Reissued Series 2013A Bonds, (ii) has set aside, or reasonably expects to set aside, any funds that are reasonably expected to be used to directly or indirectly pay debt service on the Reissued Series 2013A Bonds, or (iii) has, or is reasonably expected to have, any amounts that have a sufficiently direct connection to the Reissued Series 2013A Bonds to conclude that those amounts would have been used for the purpose of the Reissued Series 2013A Bonds if the Sale Proceeds of the Reissued Series 2013A Bonds were not used or to be used for that purpose. Specifically, the Issuer and the Borrowers each represents that it has not, and does not reasonably expect to, hold any amounts under an agreement to maintain funds at a particular level for the direct or indirect benefit of holders of the Reissued Series 2013A Bonds or a guarantor of the bonds except as otherwise described in the Original Tax Agreement. The Borrowers represent that they have not received, and they do not reasonably expect that they will receive, any donations or grants that are, or that are reasonably expected to be, pledged to pay costs of the project that is financed with the Reissued Series 2013A Bonds.

II. AGREEMENTS

1. Payment of rebate.

The Borrowers shall make, or cause to be made, rebate payments to the United States Treasury with respect to the Reissued Series 2013A Bonds at such times and in such amounts as will meet the requirements of section 148(f) of the Code. In general, these requirements include the requirement that rebate payments be made within 60 days after the end of each fifth bond year, starting with March __, 2025, the date that is 60 days after the fifth Bond Year, and within 60 days after the date the last Reissued Series 2013A Bond is retired.

III. PROVISIONS CONCERNING MODIFICATION, ENFORCEABILITY AND ADMINISTRATION OF THIS AGREEMENT

1. Modifications of covenants in this Agreement.

Notwithstanding any other provision contained in this Agreement, the covenants contained in this Agreement may be modified to the extent that an opinion of Bond Counsel is delivered to the Issuer, the Borrowers and the Trustee to the effect that any covenant required hereunder is not required to maintain the exclusion of interest on the Reissued Series 2013A Bonds from gross income for federal income tax purposes and from taxation under the personal income tax law of the State of California.

2. Termination.

This Agreement shall terminate at such time as the Reissued Series 2013A Bonds have been fully paid, retired or defeased pursuant to Treas. Reg. §1.141-12(d) and that all amounts required to satisfy section 148(f) of the Code have been paid to the United States. Notwithstanding the foregoing, the provisions of this Agreement relating to records of investments shall not terminate until the third anniversary of the April 15 of the calendar year immediately following the date the Reissued Series 2013A Bonds are fully paid and retired.

3. Severability.

If any clause, provision, or section of this Agreement is ruled invalid by any court of competent jurisdiction, the invalidity of that clause, provision, or section shall not affect any of the remaining clauses, provisions or sections of this Agreement.

4. Counterparts.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

5. Notices.

All notices, demands, communications, and requests which may or are required to be given under this Agreement or by any party to this Agreement shall be deemed given when given in accordance with the notice requirements of the Bond Indenture and the Loan Agreement.

6. Successors and assigns.

The terms, provisions, covenants, and conditions of this Agreement shall bind and inure to the benefit of the respective successors of the Issuer, the Borrowers, and the Trustee.

7. References to Code sections.

Each reference to a section of the Code in this Agreement includes a reference to the final and temporary Treasury regulations promulgated under that Code section.

8. Headings.

The headings of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement.

9. Governing law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, this Supplemental Tax Agreement has been executed as of
this ____ day of January, 2020.

ABAG FINANCE AUTHORITY FOR
NONPROFIT CORPORATIONS

By: _____
,

WELLS FARGO BANK, N.A.

By: _____
,

ACACIA CREEK, A MASONIC SENIOR
LIVING COMMUNITY AT UNION CITY

By: _____
Thomas Boyer, Chief Financial Officer

MASONIC HOMES OF CALIFORNIA

By: _____
Thomas Boyer, Chief Financial Officer

EXHIBIT A
TO
SUPPLEMENTAL TAX AGREEMENT

8038 for Reissued Series 2013A Bonds

