

After recording, please return to: CHFA, 999 West St., Rocky Hill, CT 06067; Attn: Legal

EXTENDED LOW-INCOME HOUSING COMMITMENT

This EXTENDED LOW-INCOME HOUSING COMMITMENT (the "Agreement") is made this 31 day of May, 2017 by and between **BRANFORD MANOR PRESERVATION, L.P.**, a New York limited partnership, with an office and principal place of business at 60 Columbus Circle, New York, New York 10023 (the "Owner") and the **CONNECTICUT HOUSING FINANCE AUTHORITY**, a body politic and corporate constituting a public instrumentality and political subdivision of the State of Connecticut, with an office and principal place of business at 999 West Street, Rocky Hill, Connecticut 06067 (the "Authority").

W I T N E S S E T H :

WHEREAS, the Authority is designated as the allocating housing credit agency responsible for the administration and allocation of low-income housing tax credits for the State of Connecticut;

WHEREAS, the Owner is the owner of certain real property known as Branford Manor and located at 37 Mather Avenue, Groton, Connecticut (the "Property"), which Property is more particularly described on Exhibit A, attached hereto and made a part hereof;

WHEREAS, the Property has qualified for low-income housing tax credits in the annual amount of \$2,739,341 for buildings financed by tax-exempt bonds pursuant to Section 42(h)(4) of the Internal Revenue Code of 1986, as amended (collectively, the "Code");

WHEREAS, Section 42(h)(6)(A) of the Code mandates that no low-income housing tax credit shall be allowed with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

NOW, THEREFORE, in consideration of the foregoing and for the good and valuable consideration acknowledged hereby, the Authority and the Owner hereby covenant and agree as follows:

I. DEFINITIONS.

As used in this Agreement, the terms below shall have the definitions set forth for each one, as follows:

- (a) "Compliance Period" means, with respect to any building, the period of fifteen (15) taxable years beginning with the first (1st) taxable year of the Credit Period with respect thereto.
- (b) "Credit Period" means, with respect to any building, the period of ten (10) taxable years beginning with:

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- (i) the taxable year in which the building is placed in service, or
- (ii) at the irrevocable election of the taxpayer, the succeeding year,

but only if the building is a “qualified low-income building” (as such term is defined in the Code) as of the close of the first (1st) year of such period.

- (c) "Development" means all real and personal property, and all assets of whatever nature or wherever situate, used in (or owned by) the business conducted on the Property, which business is to provide rental accommodations for persons of low and moderate income and other activities incidental thereto, and which shall also include, without limitation, a building or structure, or several proximate and interrelated buildings or structures and facilities functionally related and subordinated thereto, financed under a common plan, all located on a single tract of land [except as provided for in Section 42(g)(7) of the Code (relating to scattered site projects) and Section 42(h)(6)(K) of the Code (relating to projects which consist of more than one (1) building)], which buildings shall be owned by the same person for tax purposes and shall each contain one (1) or more similarly constructed units, having separate and complete facilities for living, sleeping, eating, cooking and sanitation for an individual or a family, and facilities which are functionally related and subordinate to such units, and all of such units shall be rented or available for rental on a non-transient basis to members of the general public, *provided, however, special provisions shall apply for eligible single room occupancy housing and transitional housing for the homeless;*
- (d) "Extended Use Period" means the period of time:
 - (i) beginning on the first (1st) day in the Compliance Period on which such building is part of a qualified low-income housing project; and
 - (ii) ending on the later of:
 - (A) the date specified in Section II(d) of this Agreement, or
 - (B) the date which is fifteen (15) years after the close of the Compliance Period.
- (e) "HUD" means the United States Department of Housing and Urban Development, or its successor;
- (f) "Qualified Person(s)" means individuals and families who, at the time each such individual or family first occupies a Unit in the Development, are of low income, having annual income not exceeding sixty percent (60%) of area median gross income, adjusted for family size, within the meaning of the Code and the Treasury Regulations promulgated thereunder, *provided, however,* in case of individuals and families

occupying at least: (i) eighty-eight (88) Units, individuals and families having an annual income not exceeding fifty percent (50%) of area median gross income at such time.

As of the date hereof, the Development has (or is expected to have) the benefit of a contract for housing assistance payments under Section 8 of the United States Housing Act of 1937, as amended (the "HAP Contract") and if during the Extended Use Period, the HAP Contract is not renewed at the end of its term, or is terminated or otherwise is no longer in full force and effect, the Authority will consider a request by the Owner to revert Qualified Units to being occupied by individuals and families having an annual income not exceeding sixty percent (60%) of area median income at such time, provided, however, a decision by the Authority on such a request shall be made in the sole discretion of the Authority;

- (g) "Qualified Rent" means gross rent (as defined in Section 42(g)(2)(B) of the Code) not greater than thirty percent (30%) of the imputed income limitation applicable to a particular Unit, within the meaning of Section 42(g)(2)(C) of the Code, as adjusted annually;
- (h) "Qualified Unit" means those Units occupied by Qualified Persons at a Qualified Rent; and
- (i) "Unit" means an individual dwelling referenced in Section I(c) of this Agreement.

II. THE COMMITMENT.

(a) Failure to comply with the provisions of this Agreement is an event of default hereunder and the Authority or its successors and/or assigns may exercise any of the remedies available hereunder. Furthermore, the Authority may seek specific performance of this Agreement by the Owner, or any successor in interest thereto, without declaring an event of default and without waiving any remedies hereunder, by filing an action in any court of competent jurisdiction in the State of Connecticut. In accordance with Section 42(g)(1) of the Code, Owner hereby irrevocably elects that:

twenty percent (20%) or more of the residential units in the Development shall be both rent-restricted and occupied by individuals whose income is fifty percent (50%) or less of area median gross income; **or**

forty percent (40%) or more of the residential units in the Development shall be both rent-restricted and occupied by individuals whose income is sixty percent (60%) or less of area median gross income.

(b) For each taxable year in the Extended Use Period, the applicable fraction (as defined in Section 42(c)(1)(B) of the Code as the smaller of the "unit fraction" [low income Units/residential rental Units] or the "floor space fraction" [total floor space of low-income Units/total floor space of residential rental Units]), shall not be less than:

441 / 441 (unit fraction)
One Hundred Percent (100%) (floor space fraction)

(c) Individuals who meet the income limitation applicable to the Development under Section 42(g)(1) of the Code (whether prospective, present, or former occupants who qualify, qualified, or would qualify) hereby have the right to enforce, in any State court, the requirements set forth in Sections II(a) and II(b) of this Agreement, and the prohibitions set forth in Section II(e)(iii), II(e)(iv), and II(f) of this Agreement, and said individuals may apply to any court of competent jurisdiction in the State of Connecticut for specific performance of the provisions of this Agreement, notwithstanding any action which may or may not be taken by the Authority.

(d) The Extended Use Period shall be for an additional twenty-five (25) years after the close of the Compliance Period, unless terminated earlier ("Early Termination") on: (i) the date of the Development's foreclosure or deed-in-lieu of foreclosure (unless the Secretary of the Treasury determines that such foreclosure or deed-in-lieu of foreclosure is part of an arrangement with a purpose of terminating the Extended Use Period); or (ii) the last day of the one (1) year period beginning on the date which a request is made by the Owner (which request is made not earlier than the end of the fourteenth (14th) year of the Compliance Period) for the Authority to present a "qualified contract" (as defined in Section 42(h)(6)(F) of the Code and Section 1.42-18 of the Treasury Regulations) for the acquisition of the low-income portion of the Development, as defined in Section 42(h)(6)(H) of the Code, all in accordance with Section 42(h)(6) of the Code, provided that the Authority has not presented such a contract. ***Notwithstanding the foregoing, in the event the Extended Use Period as agreed upon herein is longer than the date which is fifteen (15) years after the close of the Compliance Period, the Owner hereby acknowledges and agrees that such additional period constitutes a more stringent requirement as provided by Section 42(h)(6)(E) of the Code and that Section II(d)(ii) of this Agreement therefore shall not apply and shall have no force or effect.***

(e) During the Extended Use Period:

- (i) not less than four hundred forty-one (441) Units (One Hundred Percent (100%) of the Units) in the Development shall be occupied (or will be available for occupancy) by Qualified Persons (*Note: at the discretion of the Secretary of the Treasury, the maximum income levels may deviate from the area median income data to reflect current HUD policy or future Treasury policy on income limits with respect to areas with unusually low family income or high housing costs relative to family income consistent with HUD determinations under Section 8 of the United States Housing Act of 1937*);
- (ii) the rents for each Qualified Unit shall not exceed the Qualified Rent, which will be uniform for each particular housing unit size (i.e., efficiencies, one-bedroom units, two-bedroom units), regardless of the number of persons residing in the household and in accordance with Section 42(g) of the Code;

- (iii) no tenant who was occupying a Qualified Unit at any time during (or at the end of) the Extended Use Period may be removed whether by eviction, expiration of lease or for any termination of the tenancy (other than for good cause);
- (iv) no rent may be increased for any Qualified Unit beyond the Qualified Rent:
 - (A) at any time during the Extended Use Period; or
 - (B) as long as it is occupied by the tenant who was occupying the unit at the expiration of the Extended Use Period.

(f) The tenant protections set forth in Section 42(h)(6)(E)(II) of the Code shall survive for a period of three (3) years following an Early Termination and for such three (3) year period such tenant protections shall be binding upon the Property and upon any holder of a mortgage on the Property or any successor or assign of such holder who succeeds to all or any part of the Owner's interest in, or otherwise acquires title to, the Property. Such protection provides, without limitation, that for a period of three (3) years following an Early Termination of the Extended Use Period: (i) no tenant who was occupying a Qualified Unit at the end of the Extended Use Period may be removed whether by eviction, expiration of lease or any termination of the tenancy (other than for good cause); and (ii) no rent may be increased for any Qualified Unit beyond the Qualified Rent as long as it is occupied by the tenant who was occupying the unit at the Early Termination of the Extended Use Period.

III. REPRESENTATIONS, WARRANTIES & COVENANTS.

- (a) The Owner hereby represents, covenants, warrants and agrees, as follows:
 - (i) the Development is to be developed, owned, managed and operated for the Extended Use Period as "residential rental property" (as such phrase is used in Section 42(d) of the Code), on a continuous basis during the Extended Use Period and that the Development constitutes, or will constitute, a qualified low-income building or qualified project, as applicable (as defined in Section 42 of the Code);
 - (ii) Owner is a legally organized entity, qualified to transact business under the laws of the State of Connecticut, has the power and authority to own its properties and assets and to carry on its business as now being conducted, and has the full legal right, power and authority to execute and deliver this Agreement;
 - (iii) Owner shall, at the time of execution and delivery of this Agreement, have good and marketable title to the Development, free and clear of any lien or encumbrance (subject to encumbrances approved by the Authority);

(iv) Owner shall make no change in the nature, size (including number of Units) or location of the Development from that which was described in the Owner's Application to the Authority dated October 1, 2016, without the prior written consent of the Authority;

(v) Owner shall obtain the agreement of any buyer, or successor, or other person acquiring the Property or the Development, or any interest therein, that such acquisition is subject to the requirements of this Agreement, and the Owner shall promptly notify the Authority of any such transfer. ***Notwithstanding the foregoing, this provision shall not act to waive any other restriction on such sale, transfer or exchange of the Development;***

(vi) Once available for occupancy, each Qualified Unit in the Development shall be rented or available for rental on a continuous basis to members of the general public on a non-transient basis throughout the Extended Use Period (except for transitional housing for the homeless or single-room occupancy units provided under Section 42(i)(3)(B)(iii) and (iv) of the Code);

(vii) Owner shall not discriminate on the basis of race, creed, color, sex, sexual preference, age, handicap, marital status, national origin, familial status, source of income or disability in the lease, use or occupancy of the Development, or in the employment of persons for the operation and management of the Development;

(viii) Owner has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions of this Agreement and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herein;

(ix) Unless recorded concurrent with the acquisition, Owner shall obtain the consent of all holders of recorded mortgages or liens on the Property to this Agreement and such consent shall be a condition precedent to the issuance of the Internal Revenue Service Form 8609 constituting the final allocation of the low-income housing tax credits for the Development;

(x) Owner shall record this Agreement promptly on the land records of the municipality in which the Property is located, upon recording of this Agreement, the Owner shall immediately transmit to the Authority evidence of said recording including the date and volume and page numbers, and the Owner agrees that the Authority will not issue the Internal Revenue Service Form 8609, constituting final allocation of low-income housing tax credits for the Development, until the Authority has received a certified copy of the recorded Agreement;

(xi) Owner shall comply with any monitoring plan, guidelines, procedures, or requirements as may be adopted or amended from time to time by the Authority in accordance with the requirements of the Code, or regulations promulgated thereunder by the United States Department of the Treasury, Internal Revenue Service, or otherwise in order to monitor compliance with the provisions of this Agreement;

(xii) Notwithstanding anything in this Agreement to the contrary, in the event that the Owner fails to comply fully with the covenants and agreements contained herein or within the Code, all applicable regulations, rules, rulings, policies, procedures, or other official statements promulgated by the Department of Treasury, the Internal Revenue Service or the Authority, from time to time, pertaining to the obligations of the Owner as set forth therein or herein, the Authority may, in addition to all of the remedies provided by law or in equity, report such noncompliance to the Internal Revenue Service which could result in penalties and/or re-capture of low-income housing tax credits;

(xiii) Owner hereby agrees that this Agreement prohibits: (A) the disposition to any person of any portion of the building to which this Agreement applies unless all of the building to which such Agreement applies is disposed of to such person; and (B) the refusal to lease to a holder of a voucher or certificate of eligibility under Section 8 of the U.S. Housing Act of 1937 because of the status of the prospective tenant as such a holder; and

(xiv) In the event any foreclosure proceedings are initiated affecting the Property, Owner shall provide the Authority with notice of the same immediately upon receipt of service of process of said foreclosure action.

IV. MISCELLANEOUS.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Connecticut and federal law, where applicable.

(b) The invalidity of any provisions of this Agreement shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of the provisions of this Agreement, which shall continue in full force and effect as if such invalid provision had never been included herein.

(c) False statements made herein are punishable under the penalty for false statement set out in Connecticut General Statutes § 53a-157b.

(d) This Agreement shall be binding on all successors and/or assigns of the Owner and this Agreement shall be recorded and encumber the Property as a restrictive covenant in accordance with the laws of the State of Connecticut.

(e) Neither this Agreement nor any term hereof may be altered, amended, modified, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

(f) Any notice or other communication in connection with this Agreement shall be in writing and (i) deposited in the United States mail, postage prepaid, by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service, such as FedEx, addressed to the addressees, as set forth on the first page hereof. Any such addressee may change its address for such notices to any other address in the United States as such addressee shall have specified by written notice given as set forth above. A notice shall be deemed to have been given, delivered and received upon the earliest of: (A) if sent by certified or registered mail, on the date of actual receipt (or tender of delivery and refusal thereof) as evidenced by the return receipt; or (B) if hand delivered by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a business day at the specified address. Notice shall not be deemed to be defective with respect to the recipient thereof for failure of receipt by any other party. Failure or delay in delivering copies of any notice, demand, request, consent, acceptance, declaration or other communication within any corporation or firm to the persons designated to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, acceptance, declaration or other communication.

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Exhibit A**SCHEDULE A, PROPERTY DESCRIPTION**

ALL THAT CERTAIN piece or parcel of land, together with all buildings and improvements thereon standing, situated in the Town of Groton, County of New London and State of Connecticut, and described as follows:

BEGINNING at the northwesterly corner of the herein described tract, said point of beginning being in the easterly street line of Shennecossett Road, so-called, and also being the southwesterly corner of land now or formerly of Kacey's Inc.; thence running easterly, bounded northerly by said Kacey's Inc. land, a distance of 172.26 feet to the southeasterly corner of said Kacey's Inc. land; thence turning an interior angle of 269° 50' 44" and running northerly, bounded westerly by said Kacey's Inc. land, a distance of 144.79 feet to a corner; thence turning an interior angle of 89° 26' 00" and running easterly, bounded northerly by said Kacey's Inc. land, a distance of 149.95 feet to a corner; thence turning an interior angle of 270° 13' 00" and running northerly, bounded westerly by said Kacey's Inc. land, a distance of 71.52 feet to the northeasterly corner of said Kacey's Inc. land; thence turning an interior angle of 81° 09' 00" and running easterly by and along a stone wall, bounded northerly by land now or formerly of Colonial Manor Inc., a distance of 352.74 feet to a drill hole; thence turning an interior angle of 162° 38' 00" and continuing easterly by and along said wall, bounded northerly by said Colonial Manor Inc. land, a distance of 49.40 feet to a drill hole; thence turning an interior angle of 206° 51' 00" and continuing easterly by and along said wall, bounded northerly by said Colonial Manor Inc. land, a distance of 195.65 feet to a drill hole, thence turning an interior angle of 175° 56' 00" and continuing easterly by and along said wall, bounded northerly by said Colonial Manor Inc. land, a distance of 245.35 feet to a drill hole; thence turning an interior angle of 179° 05' 00" and continuing easterly, bounded northerly by said Colonial Manor Inc. land, a distance of 522.83 feet to an iron pipe set at the northeasterly corner of the herein described tract at the westerly shoreline of Birch Plain Creek; thence turning and running southerly by and along the westerly shoreline of said Birch Plain Creek a distance of 635 feet more or less to a drill hole set in the northerly line of land now or formerly of the City of Groton; thence turning and running westerly, bounded southerly by land now or formerly of the City of Groton, a distance of 309.77 feet to an iron pipe; then turning an interior angle of 253° 39' 50" and running southerly by land now or formerly of the City of Groton, a distance of 600.00 feet to an iron pipe; thence turning an interior angle of 84° 20' 49" and running westerly, bounded southerly by other land now or formerly of Edmund O'Brien, Trustee, a distance of 256.51 feet to an iron pipe; thence turning an interior angle of 270° 00' 00" and running southerly, bonded easterly by said O'Brien land, a distance of 331.41 feet to a drill hole set at the southeasterly corner of the herein described tract at the northeasterly corner of the herein described tract at the northeasterly line of Shennecossett Road; thence turning an interior angle of 90° 07' 21" and running northwesterly by and with said northeasterly line of Shennecossett Road a distance of 213.22 feet to a cross in a rock; thence turning an interior angle of 181° 51' 05" and continuing northwesterly by and with said northeasterly street line a distance of 598.70 feet to a drill hole at an angle point in said street line; thence turning an interior angle of 122° 27' 25" and running northerly by and with the easterly street line of said Shennecossett Road a distance of 364.35 feet to a mere stone; thence turning an interior angle of 194° 37' 30" and continuing northerly by and with said easterly street line a distance of 95.95 feet to a street pin; thence turning an interior angle of 169° 37' 00" and continuing northerly by and with said easterly street line a distance of 58.84 feet to a cross in a rock; thence turning an interior angle of 170° 06' 37" and continuing northerly by and with said easterly street line a distance of 302.31 feet to the point and place of beginning, said last course forming an interior angle of 90° 05' 03" with said first course.

Received for Record at Groton, CT
On 05/31/2017 At 1:57:53 pm

Attest: Betsy Moukawsher, Town Clerk