

Return to:
 Marie V. Phelan
 Pullman & Comley, LLC
 90 State House Square
 Hartford, CT 06103


 Doc ID: 004825000023 Type: LAN
 BK 1183 PG 1015-1037

TAX REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This **TAX REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS** (the “**Agreement**”) is made and entered into as of May 1, 2017, by and among **The TOWN OF GROTON HOUSING AUTHORITY** (the “**Authority**”) a body corporate and politic duly organized and validly existing under the laws of the State of Connecticut, **BRANFORD MANOR PRESERVATION, L.P.**, a limited partnership, duly formed and validly existing under the laws of the State of New York, (the “**Owner**”), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as Fiscal Agent (the “**Fiscal Agent**”) (capitalized terms used and not defined in the Recitals having the meanings set forth in Section 1 hereof).

WITNESSETH:

WHEREAS, the Owner has agreed to redevelop the real property and the facilities thereon located in Groton Connecticut and described in Exhibit A hereto, which description is incorporated herein, by acquiring, rehabilitating, renovating, improving and equipping a multifamily housing complex, containing approximately 441 affordable living units (the “**Project**”); and

WHEREAS, the acquisition, rehabilitation, improvement and equipping of the Project is being financed, in part, by the Project Loan which will be funded from proceeds of the Governmental Note in the initial principal amount of \$53,000,000 (the “**Governmental Obligation**”); and

WHEREAS, the interest on the Governmental Obligation is intended to be excluded from gross income for federal income tax purposes by reason of the Project being operated continuously in compliance with Section 142(d) of the Code; and

WHEREAS, because operation of the Project in compliance with Section 142(d) of the Code is in large part within the control of the Owner, the Authority is unwilling to issue the Governmental Obligation and loan the proceeds thereof to the Owner unless the Owner consents to regulation of the Project as provided herein in order to preserve the tax-exempt status of interest on the Governmental Obligation under Section 142(d) of the Code;

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Authority, the Owner and the Fiscal Agent agree as follows:

Section 1: Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms shall have the respective meanings set forth below for the purposes hereof:

“Act” means Chapter 128 of the General Statutes of Connecticut.

“Area Median Gross Income” shall mean the median income, as determined from time to time by HUD in a manner consistent with determinations of area median gross income for the Metropolitan Statistical Area in which the Project is located, under (i) Section 8 of the United States Housing Act of 1937, as amended, and (ii) Section 3009a of the Housing and Economic Recovery Act of 2008.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and all Treasury Regulations relevant thereto.

“Funding Lender” shall mean any Person who is the holder of the Governmental Note.

“Funding Lender Representative” shall have the meaning assigned to it in the Funding Loan Agreement.

“Funding Loan Agreement” shall mean the Funding Loan Agreement entered into as of May 1, 2017 by and among the Authority, Initial Funding Lender and the Fiscal Agent

“Funding Loan” means the loan in the original principal amount of \$53,000,000 made to the Governmental Lender pursuant to this Funding Loan Agreement by the Initial Funding Lender.

“Governmental Note” means the Multifamily Housing Revenue Note dated May 31, 2017, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of the Initial Funding Lender as the same may be amended, restated, supplemented or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

“HUD” shall mean the United States Department of Housing and Urban Development, or any successor agency of the United States government.

“Initial Funding Lender” shall mean Wells Fargo Bank, National Association, as initial holder of the Governmental Note

“Legislative Authority” shall mean the Board of the Authority.

“Project” means, collectively, the land and residential rental apartment units, and related fixtures, equipment, furnishings and site improvements known as Branford Manor Apartments located at 37 Mather Avenue in Groton, Connecticut including the real estate described in the Security Instrument.

“Project Loan” shall mean the loan in the original principal amount of \$53,000,000 made to the Owner pursuant to the Project Loan Agreement by the Authority.

“Project Loan Agreement” means the Project Loan Agreement dated as of the date hereof among the Owner, the Authority and the Fiscal Agent, as amended, supplemented or restated from time to time.

“Project Note” shall mean the Project Note, including applicable addenda, to be executed by the Owner in favor of the Authority, evidencing the Owner’s financial obligations under the Project Loan

“Qualified Project Period” shall mean the period commencing on the first day on which at least 10% of the residential units in the Project are first occupied after the Project has been placed in service by the Owner (or, if later, the date on which the Governmental Obligation are issued) and ending on the latest of the following: (i) the date that is 15 years after the date on which at least 50% of the residential units in the Project are first occupied; (ii) the first day on which no tax-exempt private activity bond including the Government Obligation issued with respect to the Project is outstanding; or (iii) the date on which any assistance provided with respect to the Project under Section 8 terminates.

“Qualified Tenants” shall mean individuals or families whose income does not exceed 60% of the Area Median Gross Income; provided, however, that if all the occupants of a Unit are students (as defined in Section 152(f)(2) of the Code) who fail to be described in Section 42(i)(3)(D) of the Code, the occupants of that Unit shall in no event be deemed to be “Qualified Tenants.” The income of individuals and Area Median Gross Income shall be determined by the Secretary of the Treasury in a manner consistent with determinations of lower income families and Area Median Gross Income under Section 8 (or, if such program is terminated, under such program in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for family size as prescribed under Section 8.

“Section 8” shall mean Section 8 of the United States Housing Act of 1937, as amended.

“Security Instrument” shall mean the Multifamily Open-End Mortgage, Assignment of Rents and Security Agreement, together with all riders thereto, securing the Project Note, executed by the Owner with respect to the Project, as it may be amended, modified, supplemented or restated from time to time.

“Treasury Regulations” shall mean the Income Tax Regulations from time to time promulgated or proposed by the Department of the Treasury pursuant to the Code or any predecessor or successor thereto.

“Unit” shall mean “unit” as defined in Treasury Regulation §1.103-8(b)(8)(i), that is, any accommodation containing separate and complete facilities for living, sleeping, eating, cooking, and sanitation. Such accommodations may be served by centrally located equipment, such as air conditioning or heating. Thus, for example, an apartment containing a living area, a sleeping area, bathing and sanitation facilities, and cooking facilities equipped with a cooking range, refrigerator, and sink, all of which are separate and distinct from other apartments, would constitute a unit. Notwithstanding the foregoing, a dwelling unit shall not fail to be treated as a Unit merely because such dwelling unit is a single-room occupancy unit (within the meaning of Section 42 of the Code).

Any term not defined in this Agreement shall have the same meaning as defined for purposes of Section 142 of the Code.

Unless the context clearly requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. All the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof. The titles and headings of the sections hereof have been inserted for convenience of reference only and are not to be considered a part hereof and shall

not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this instrument or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 2: Qualified Tenants. To the end of satisfying the requirements of the Authority, the Fiscal Agent, and Section 142(d) of the Code, the Owner hereby represents, covenants, and agrees as follows:

(a) The Project is being acquired for the purpose of providing a “qualified residential rental project”, as such phrase is used in Section 142(d) of the Code, and will constitute residential rental property. In the event a Unit within a “building or structure” (as defined in Treasury Regulations §1.103-8(b)(8)(iv)) is occupied by the Owner, the building or structure must include no fewer than four Units not occupied by the Owner;

(b) At all times during the Qualified Project Period, the Owner will ensure that Qualified Tenants occupy at least 40% of completed Units, unless in the Opinion of Bond Counsel occupancy of a lower percentage of Units by Qualified Tenants will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Obligation. A vacant Unit previously occupied by a Qualified Tenant shall be treated as occupied by a Qualified Tenant until reoccupied, other than for a temporary period not to exceed 31 days, by another occupant, at which time the character of the Unit shall be redetermined. For purposes of this subsection, a Unit occupied by an individual or family who at the commencement of the occupancy is a Qualified Tenant is treated as occupied by such an individual or family during their tenancy in such Unit, even though they subsequently cease to be a Qualified Tenant. However, the preceding sentence shall cease to apply to any resident whose income under the most recent determination exceeds 140% of the applicable income limit if after such determination, but before the next determination, any Unit of comparable or smaller size in the Project is occupied by a new resident whose income exceeds the applicable income limit. The form of lease to be used by the Owner in renting any Units in the Project to a person who is intended to be a Qualified Tenant shall (i) provide for termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualified Tenant as a result of any material misrepresentation made by such person with respect to the income certification, and (ii) require that the tenant of the Unit certify the income of the residents of the Unit annually and at any time as the Owner may reasonably request;

(c) The Owner will prepare and submit or make available to the Authority, within thirty (30) days after first occupancy of (i) ten percent (10%) of the Units and (ii) fifty percent (50%) of the Units in the Project, certificates executed by the Owner, and substantially in the form of Exhibit C hereto, stating the date upon which those respective percentages of Units in the Project were first occupied;

(d) At all times during the Qualified Project Period, the Owner will obtain and maintain on file income certifications from each Qualified Tenant residing in the Project as to the anticipated income of such Qualified Tenant for the period of 12 consecutive months beginning with the date on which the Qualified Tenant first occupied a Unit or first signs a lease for a Unit and for each 12 month period thereafter, in the form and manner as may be required by applicable rules, regulations, or policies now or hereafter promulgated by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 142(d) of the Code.

In addition to the income certifications provided for herein, the Owner shall submit any other information, documents, or certifications requested by the Authority that the Authority or the Fiscal Agent, respectively, deems reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the Loan Agreement and Section 142(d) of the Code;

(e) At all times during the Qualified Project Period, the Owner will obtain and maintain on file from each Qualified Tenant residing in the Project a copy of such Qualified Tenant's federal income tax return for the taxable year immediately preceding such Qualified Tenant's initial occupancy (or, if later, the commencement of the Qualified Project Period) in the Project and each year thereafter or other satisfactory evidence of income for such year;

(f) The Owner will permit any duly authorized representative of the Authority, the Fiscal Agent, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Owner including those pertaining to the incomes of Qualified Tenants residing in the Project;

(g) During the Qualified Project Period, the Owner will prepare and submit or make available to the Authority, within 15 days after the first day of each calendar quarter, a Certificate of Continuing Program compliance executed by the Owner in the form attached here to as Exhibit B. It will include a statement that at all times during the preceding calendar quarter at least 40% of the completed Units were occupied by Qualified Tenants (or, in the case of Units previously rented to Qualified Tenants and subsequently held vacant, without an intervening tenancy other than for a temporary period not exceeding 31 days, were available for occupancy by Qualified Tenants) and that all Units were rented or available for rental on a continuous basis during such month to members of the general public (except for those Units rented to resident managers or maintenance personnel or with assistance under Section 8, which were rented or available for rental to eligible tenants in accordance with the constraints and regulations relating to Section 8); and

(h) The Owner shall submit to the Secretary of the Department of the Treasury, at such time and in such manner as the Secretary shall prescribe an annual certification (presently in the IRS Form 8703) as to whether the Project continues to meet the requirements of Section 142(d) of the Code. The Owner shall simultaneously send a copy of such certifications to the Authority and maintain a copy for its records. The Owner acknowledges that failure to file such certification shall subject the Owner to penalty as provided in Section 6652(j) of the Code.

The Authority, the Fiscal Agent and the Owner agree that in the event of the failure of the Owner to comply with any of the foregoing undertakings the Authority will have no adequate remedy at law and the only appropriate remedy will be an order requiring specific performance by the Owner of those undertakings. Therefore, notwithstanding any other provision of this Agreement to the contrary, the Owner agrees that in order to further the public purpose of the Authority in issuing the Governmental Obligation and entering into this Agreement (i) if the Authority or any Person acting on behalf of the Authority, in any judicial or administrative proceeding, petitions the court or administrative body for an order requiring the Owner to specifically perform any of the undertakings set forth in this paragraph, the Owner shall not object to such petition; and (ii) the Owner shall pay, or reimburse the Authority or such Person acting on behalf of the Authority for payments made by the Authority or such Person, the reasonable costs and expense (including, but not limited to, the reasonable fees and expenses of counsel to the Authority or such Person) of maintaining such judicial or administrative proceeding.

Section 3: Qualified Residential Rental Project. The Authority and the Owner hereby covenant and declare their understanding and intent that the Project is to be owned, managed, and operated as a “qualified residential rental project” as such phrase is used in Section 142(d) of the Code and that each Unit will be rented or available for rental continuously until termination of the Qualified Project Period. The Authority and the Owner covenant to take any lawful action (including amendment of this Agreement as may be necessary in the Opinion of Bond Counsel) to comply fully with all applicable rules, rulings, policies, procedures, regulations, or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service from time to time pertaining to obligations issued under Section 142(d) of the Code and affecting the Project. To facilitate compliance with these covenants, the Owner hereby represents, covenants, and agrees that:

(a) The Project is being acquired, rehabilitated and renovated for the purpose of providing residential rental property, and the Owner (or transferee under Section 4 hereof) shall own, manage, and operate the Project to provide residential rental property comprised of a building or structure, together with functionally related and subordinate facilities, containing one or more similarly constructed Units, and no other facilities, in accordance with Section 142(d) of the Code and Treasury Regulation §1.103-8(b);

(b) Substantially all of the Project will contain one or more similarly constructed units and functionally related and subordinate facilities;

(c) Each Unit in the Project shall be similarly constructed and will continue to constitute a Unit;

(d) Once available for occupancy, each Unit shall be rented or available for rental on a continuous basis to members of the general public (except for those Units to be rented to a resident manager or maintenance personnel or with assistance under Section 8, which are to be rented or available for rental to eligible tenants in accordance with the constraints and regulations relating to Section 8) and the Owner shall not otherwise give preference in renting Units in the Project to any particular class or group of persons, other than Qualified Tenants to the extent required under Section 142(d) or to the extent required by the Extended Use Agreement to be entered into by the Owner pursuant to Section 42 of the Code;

(e) None of the Units in the Project shall at any time be used on a transient basis; none of the Units in the Project shall at any time be leased or rented for a period of less than six months; and neither the Project nor any portion thereof shall at any time be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home, retirement home, or trailer court or park;

(f) No action will knowingly be taken or permitted that would adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Obligation;

(g) No part of the Project will at any time be owned or used by a cooperative housing corporation;

(h) Qualified Tenants will have equal access to and enjoyment of all common facilities of the Project;

(i) The Project will be owned in its entirety by the Owner, will be financed pursuant to a common plan, and will be located on a single parcel of land or two or more contiguous parcels of land (except for the interposition of a road, street, stream or similar property), and all of the improvements will comprise a single geographically and functionally integrated project for residential rental property, as evidenced by the ownership, management, accounting, and operation of the Project;

(j) The Owner will not convert the Project to condominium or cooperative ownership; and

(k) Units occupied by Qualified Tenants will be reasonably interspersed throughout the Project.

Section 4: Transfer; Amendment; Termination; Term.

(a) This Agreement shall be placed and recorded on the land records of Town of Groton, Connecticut, the covenants contained herein shall run with the land and shall bind the Owner, and its successors and assigns and all subsequent owners or operators of the Project or any interest therein, and the benefits shall inure to the Authority and its successors and assigns, and the Fiscal Agent and its successors and assigns, for the Qualified Project Period (or, as to the Fiscal Agent, until the indefeasible payment in full of the Governmental Obligation, if sooner).

(b) Subject only to the conditions of paragraph 4(e) of this Agreement and no other provision hereof, the covenants, reservations and restrictions contained in Sections 2 and 3 hereof shall continue in full force and effect during the respective periods set forth therein, it being expressly agreed and understood that except as otherwise expressly stated in paragraph 4(e) the provisions hereof are intended to survive the maturity of the Governmental Obligation, if such maturity date occurs prior to those periods.

(c) As a condition to a transfer in whole or in part of the Project to any grantee, purchaser, or any other person or entity, said grantee, purchaser, or other person or entity shall assume the obligations set forth herein, including this Section 4, and agree to perform the same and be bound by all provisions, covenants, restrictions, reservations, charges and easements contained herein, and the Owner shall deliver an agreement of assumption to the Authority and the Fiscal Agent (unless the Governmental Obligation have been indefeasibly paid in full) prior to any such transfer. No transfer of the Project shall operate to release the Owner from its obligations under this Agreement arising or occurring prior to the date of such transfer.

(d) The provisions hereof shall not be amended, revised, or terminated prior to the stated term hereof except by an instrument in writing duly executed by the Authority, the Fiscal Agent (unless the Governmental Obligation have been indefeasibly paid in full), and the Owner or their respective successors in title, and duly recorded on the land records of the Town of Groton, Connecticut. The prior written consent of the Authority and the Fiscal Agent to any such amendment, revision, or termination shall be given only upon receipt of an Opinion of Bond Counsel that such amendment, revision, or termination will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any of the Governmental Obligation.

(e) Notwithstanding any provision of this Agreement to the contrary, this Agreement, and each and all of the terms hereof, shall terminate and be of no further force and effect in the

event of a foreclosure of the lien of the mortgage securing the Project or delivery of a deed in lieu of foreclosure, pursuant to which a purchaser or transferee pursuant to such foreclosure or deed in lieu of foreclosure shall take possession of the Project, or involuntary noncompliance with the provisions of this Agreement caused by fire, seizure, requisition, change in a federal law, or an action of a federal agency after the date hereof which prevents the Authority from enforcing the provisions hereof, or condemnation or a similar event, but only if (x) all of the Governmental Obligation are paid in full and retired within a reasonable period thereafter, provided, however, that the restrictions shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure of the lien of such mortgage, the delivery of a deed in lieu of foreclosure or comparable conversion, the Owner or any related person (within the meaning of Treasury Regulation Section 1.103-10(e)) obtains an interest in the Project which constitutes an ownership interest for federal income tax purposes or (y) an Opinion of Bond Counsel is delivered to the Authority to the effect that such termination will not adversely affect the exclusion from gross income for federal income tax purposes of the interest payable on the Governmental Obligation. Upon the termination of all and several of the terms of this Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Agreement in accordance with its terms.

Section 5: Remedies; Enforceability.

(a) In the event of a violation or attempted violation of any of the provisions hereof, the Authority or (unless the Governmental Obligation have been indefeasibly paid in full) the Fiscal Agent and their respective successors and assigns, may institute and prosecute any proceeding at law or in equity to enforce the provisions hereof or to abate, prevent, or enjoin any such violation or attempted violation, or to enforce compliance. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage, or waive the right of any party entitled to enforce the same or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times. Any attempted sale, transfer, lease, or other disposition that would cause or result in a violation of any of the provisions hereof shall be null and void and of no effect.

(b) The Owner covenants and agrees to inform the Authority and (unless the Governmental Obligation have been indefeasibly paid in full) the Fiscal Agent by written notice of any violation of the Owner's obligations hereunder within five business days of first discovering any such violation, and the Authority or (unless the Governmental Obligation have been indefeasibly paid in full) the Fiscal Agent, as appropriate, covenant and agree to inform, or cause their respective authorized representative, as appropriate, to inform the Owner by written notice of any violation of the Owner's obligations hereunder and to provide the Owner and its limited partner a period of 30 days after the date any notice to the Owner is mailed to correct such violation, provided that if the violation is of such nature that it cannot be corrected within the 30-day period, the period for correction shall be extended, if in the Opinion of Bond Counsel such extension will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Obligation, so long as the Owner or its limited partner institutes curative action within the applicable period and diligently pursues that action to completion, but not to exceed any limitations set by applicable Treasury Regulations. If any such violation is not corrected to the reasonable satisfaction of the Authority and the Fiscal Agent within the period of time provided by this paragraph, the Authority or (unless the Governmental

Obligation have been indefeasibly paid in full) the Fiscal Agent may, without further notice, but shall not be obligated to, declare a default under this Agreement effective on the date of such declaration of default. Upon such default, the Authority or (unless the Governmental Obligation have been indefeasibly paid in full) the Fiscal Agent may apply to any court, state or federal, for a specific performance of this Agreement or an injunction against any violation of this Agreement, or any other remedies at law or in equity or any such other actions shall be necessary or desirable so as to correct non-compliance with this Agreement. Except as otherwise expressly set forth herein, neither the Authority nor the Fiscal Agent shall seek to recover damages from the Owner or pursue any other remedy which could cause the Owner to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Owner under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future.

Section 6: Indemnification. The Owner hereby covenants and agrees that it shall indemnify and hold harmless the Authority, and the Fiscal Agent and their respective officers, directors, officials, employees and agents from and against any and all claims by or on behalf of any person arising from any cause whatsoever in connection with this Agreement or the Project, any and all claims arising from any act or omission of the Owner or any of its agents, contractors, servants, employees or licensees in connection with the Project, and all costs, damages, fines, penalties, reasonable counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Owner shall not be required to indemnify any person other than the Authority for damages caused by the negligence or willful misconduct or breach of contract of such person and as to the Authority for damages caused by its gross negligence or willful misconduct. In the event that any action or proceeding is brought against the Authority, or the Fiscal Agent or any of their respective officers, directors, officials, employees or agents, with respect to which indemnity may be sought hereunder, the Owner, upon written notice from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The indemnified party shall have the right to employ separate counsel in any such action or proceedings and to participate in the defense thereof, and, unless the Indemnified Party concludes in good faith that a conflict of interest exists with regard to representation of both of the Owner and an indemnified party, the indemnified party shall pay the reasonable fees and expenses of such separate counsel.

The Owner also shall pay and discharge and shall indemnify and hold harmless the Authority and the Fiscal Agent from (a) any lien or charge upon payments by the Owner to the Authority and the Fiscal Agent hereunder, and (b) any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges in respect of any portion of the Project. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the Authority or the Fiscal Agent shall give prompt notice to the Owner and the Owner shall have the sole right and duty to assume, and will assume, the defense thereof, with full power to litigate, compromise, or settle the same in its sole discretion.

In addition thereto, the Owner will pay upon demand all of the out-of-pocket fees and expenses paid or incurred by the Fiscal Agent and/or the Authority in enforcing the provisions hereof. Such amounts shall be in addition to the fees that will be payable by the Owner to the Fiscal Agent pursuant to Section 4.2 of the Loan Agreement.

No obligation of the Owner under this Agreement for the payment of money, including claims for indemnification obligations and damages, may be secured by or in any manner constitute a lien on the Project, or shall constitute an obligation of any partners, officers, employees or agents of the Owner, and neither the Authority nor the Fiscal Agent shall have the right to enforce such obligations other than directly against the Owner.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions hereof, the Owner shall remain obligated to indemnify each indemnified party pursuant to this Section 6 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless the Authority and the Fiscal Agent have consented to such transfer and to the assignment of the rights and obligations of the Owner hereunder.

Section 7: Consideration. The Authority has determined to finance acquisition, renovation, equipping and improvement of the Project through the issuance of the Governmental Obligation, and has issued the Governmental Obligation to obtain funds for the purpose, among others, of inducing the Owner to acquire, renovate and operate the Project as residential rental property in which at least 40% of the Units are to be occupied by Qualified Tenants. In consideration of the issuance of the Governmental Obligation by the Authority, the Owner has accepted the terms and provisions hereof.

Section 8: Covenant. The covenants of the Owner in this Tax Regulatory Agreement shall be deemed to constitute covenants of the Owner running with the land and an equitable servitude for the benefit of the Governmental Lender and the Funding Lender and shall be binding upon any owners of the Project until such time as such restrictions expire as provided in the Tax Regulatory Agreement.

Section 9: Governing Law. This instrument shall be governed by the laws of the State of Connecticut.

Section 10: Severability. If any provision hereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

Section 11: Notices. Unless otherwise specified in this Agreement, it shall be sufficient service or giving of any notice, request, certificate, demand or other communication if the same shall be sent by, and all notices required to be given by mail shall be given by, first-class registered or certified mail, return receipt requested, or by private courier service which provides evidence of delivery, postage or other charges prepaid, or sent by telecopy or other means which produces evidence of transmission, confirmed by first-class mail, and in each case shall be deemed to have been given on the date evidenced by the postal or courier receipt or other written evidence of delivery or electronic transmission. Unless a different address is given by any party as provided in this Section, all such communications shall be addressed as follows:

To the Authority:

Town of Groton Housing Authority
770 Poquonnock Road
Groton, CT 06340

Attention: Executive Director
Email: [rcappelletti@grotonhousing authority.org](mailto:rcappelletti@grotonhousingauthority.org)
Telephone: 860-445-1596
Fax: (860) 448-0051

To the Fiscal Agent: U.S. Bank National Association
Goodwin Square
225 Asylum Street, 23rd Floor
Hartford, CT 06103
Attention: Corporate Trust Department
Fax: (860) 241-6897
E-mail: Maryanne.dufresne@usbank.com

To the Owner: Branford Manor Preservation, L.P.
c/o The Related Companies
60 Columbus Circle, 18th Floor
New York, NY 10023
Attention: Matthew Finkle
Fax: (212) 801-3731

With copies to: Wells Fargo Affordable Housing
Community Development Corporation
MAC D1053-170
301 South College Street, 17th Floor
Charlotte, NC 28288
Attention: Director of Tax Credit Asset
Management

Philip Spahn
Sidley Austin LLP
One South Dearborn
Chicago, IL 60603

Levitt & Boccio, LLP
423 West 55th Street, 8th Floor
New York, NY 10019
Attention: David S. Boccio, Esq.
Telephone: (212) 801-3769
Fax: (212) 801-3762
E-mail: DBoccio@levittboccio.com

The Authority, Owner and the Fiscal Agent, by notice given under this Agreement, may designate any different addresses to which subsequent notices, certificates, requests, demands or other communications shall be sent, but no notice directed to any one such entity shall be required to be sent to more than two addresses. All approvals required under this Agreement shall be given in writing.

Section 12: Freddie Mac Rider. The Freddie Mac Rider attached hereto as Exhibit D is incorporated herein and forms a part of this Agreement.

Section 13: Multiple Counterparts. This instrument may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

Section 14: Fiscal Agent. The Fiscal Agent shall have no liability under or pursuant to this Agreement except for and to the extent of its own gross negligence or willful misconduct in violation of its duties expressly set forth in this Agreement. The duties and obligations of the Fiscal Agent under or pursuant to this Agreement shall be solely those expressly set forth in this Agreement, and no implied duties or covenants shall be read into this Agreement on the part of the Fiscal Agent. The Fiscal Agent is entering into this Agreement solely pursuant to, and in its capacity set forth in the Funding Loan Agreement, and, in acting hereunder, shall be entitled to all of its rights and benefits under the Funding Loan Agreement.

(Balance of page intentionally left blank – signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Tax Regulatory Agreement and Declaration of Restrictive Covenants as of the date first set forth above.

AUTHORITY:

TOWN OF GROTON HOUSING AUTHORITY

Nancy Mather

Marie Phelan

By: Robert Cappelletti
Name: Robert Cappelletti
Title: Executive Director

OWNER:

BRANFORD MANOR PRESERVATION, L.P.,
a New York limited partnership

By: Branford Manor Preservation GP LLC,
a New York limited liability company,
its Sole General Partner

Heather C. Cook

M. L.

By: Matthew Finkle
Name: Matthew Finkle
Title: Vice President

FISCAL AGENT:

U.S. BANK NATIONAL ASSOCIATION, as
Fiscal Agent

Jessica Granath
Marie V. Phelan

By: Maryanne Dufresne
Name: Maryanne Dufresne
Title: Vice President

[Signature Page – Tax Regulatory Agreement and Declaration of Restrictive Covenants]

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

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 southwest 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 $269^{\circ} 50' 44''$ 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 $89^{\circ} 26' 00''$ and running easterly, bounded northerly by said Kacey's Inc. land, a distance of 148.95 feet to a corner; thence turning an interior angle of $270^{\circ} 13' 00''$ 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 $81^{\circ} 09' 00''$ and running easterly by and along a stone wall, bounded northerly by land now or formerly of Colonial Manor Inc., a distance of 952.74 feet to a drill hole; thence turning an interior angle of $162^{\circ} 38' 00''$ 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 $206^{\circ} 51' 00''$ and continuing easterly by and along said wall, bounded northerly by sold Colonial Manor Inc. land, a distance of 196.65 feet to a drill hole; thence turning an interior angle of $175^{\circ} 65' 00''$ 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 $179^{\circ} 05' 00''$ 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 $253^{\circ} 39' 60''$ 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 $84^{\circ} 20' 49''$ and running westerly, bounded southerly by other land now or formerly of Edmund O'Brien, Trustee, a distance of 286.51 feet to an iron pipe; thence turning an interior angle of $270^{\circ} 00' 00''$ and running southerly, bounded 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 $90^{\circ} 07' 21''$ 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 $181^{\circ} 51' 05''$ 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 $122^{\circ} 27' 25''$ 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 $194^{\circ} 37' 30''$ 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 $169^{\circ} 37' 00''$ 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 $170^{\circ} 08' 37''$ 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 $90^{\circ} 05' 03''$ with said first course.

EXHIBIT B
FORM OF CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

The **BRANFORD MANOR PRESERVATION, L.P.**, the Owner, shall certify, in each Certificate of Continuing Program Compliance, that to the best of its knowledge:

(1) The Project met the requirements of the 40/60 test under §142(d) of the Code;

(2) The Owner has received an annual income certification from each tenant of a Low Income Unit and documentation to support that certification;

(3) All units in the Project were for use by the general public and are used on a non-transient basis except for the employee's unit;

(4) The Project was suitable for occupancy, taking into account local health, safety, and building codes;

(5) If a Low Income Unit in the Project became vacant during the preceding period, reasonable attempts were or are being made to rent that unit to tenants having a qualifying income;

(6) Each of the buildings in the Project complies with the requirements of the Code applicable to the Governmental Obligation; and

(7) The Project is in compliance with the Tax Regulatory Agreement and Declaration of Restrictive Covenants in all material respects.

(8) As of the date of this certificate, the following numbers and percentages of completed residential Units in the Project (i) are occupied by Qualified Tenants or (ii) are currently vacant and being held available for such occupancy and have been so held continuously since the date a Qualified Tenant vacated such Unit, as indicated:

	Number of Units	Percentage of Units
Occupied by Qualified Tenants:	_____	_____
Held vacant for occupancy continuously since last occupied by Qualified Tenants:	_____	_____

BRANFORD MANOR PRESERVATION, L.P.,
a New York limited partnership

By: Branford Manor Preservation GP, LLC,
a New York limited liability company,
its Sole General Partner

Date: _____

By: _____
Name: Matthew Finkle
Title: Vice President

EXHIBIT C

To: Housing Authority of the Town of Groton, Connecticut
Attn: Robert Cappelletti, Executive Director
770 Poquonnock Road
Groton, CT 06340

The undersigned, on behalf of **BRANFORD MANOR PRESERVATION, L.P.** (the "Owner"), hereby certifies, pursuant to Section 2(c) of the Tax Regulatory Agreement and Declaration of Restrictive Covenants, dated as of May 1, 2017 among the Owner, U.S. Bank National Association as Fiscal Agent and you, (the "Regulatory Agreement"), which was recorded in the land records of the Town of Groton, Connecticut in Volume _____, Page _____,

- that _____, 20__ was the date on which ten percent (10%) of the Units;
and
- that _____, 20__ was the date on fifty percent (50%) of the Units

in the Project (as such terms are defined in the Regulatory Agreement) were first occupied.

Dated: _____

**BRANFORD MANOR PRESERVATION,
L.P.**, a New York limited partnership

By: Branford Manor Preservation GP, LLC,
a New York limited liability company,
its Sole General Partner

By: _____
Name: Matthew Finkle
Title: Vice President

EXHIBIT D

FREDDIE MAC RIDER

This Freddie Mac Rider (the “Rider”) is attached to and forms a part of the Tax Regulatory Agreement and Declaration of Restrictive Covenants (the “Regulatory Agreement”), dated as of May 1, 2017, by and among Town of Groton Housing Authority (the “Governmental Lender”), U.S. Bank National Association, as fiscal agent (together with any successor in such capacity, the “Fiscal Agent”), and Branford Manor Preservation, L.P. (together with any successor to its rights, duties and obligations hereunder and as owner of the Project identified herein, the “Borrower”).

1. Definitions. Terms used in this Rider as defined terms shall have the meanings given those terms in the Regulatory Agreement and the Funding Loan Agreement. In addition, the following terms shall have the following meanings:

“Freddie Mac” means the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States.

“Funding Lender” means the holder of the Governmental Note, initially Wells Fargo Bank, National Association and on the Freddie Mac Purchase Date, Freddie Mac, and any successors or assigns thereof.

“Funding Loan Agreement” means the Funding Loan Agreement dated as of May 1, 2017 by and among the Governmental Lender, the Initial Funding Lender set forth therein and the Fiscal Agent, as such Funding Loan Agreement may from time to time be amended or supplemented.

“Governmental Note” means the Multifamily Note dated May 31, 2017 delivered by the Governmental Lender pursuant to the Funding Loan Agreement.

“Project Loan” means the loan to the Borrower pursuant to the Project Loan Documents, which Project Loan is to be assigned to the Fiscal Agent.

“Project Loan Agreement” means the Project Loan Agreement dated as of May 1, 2017, among the Borrower, the Governmental Lender and the Fiscal Agent, as such Project Loan Agreement may from time to time be amended or supplemented.

“Project Loan Documents” means the Security Instrument, the Project Note, the Project Loan Agreement, the Tax Regulatory Agreement and Declaration of Restrictive Covenants, the Assignment, the Continuing Covenant Agreement, any Subordination Agreement(s) and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof.

“Project Note” means the Project Note, including applicable addenda, to be executed by the Borrower in favor of the Governmental Lender, evidencing the Borrower’s financial obligations under the Project Loan, and to be endorsed by the Governmental Lender, without recourse, to the order of the Fiscal Agent, as the same may be amended, modified, supplemented or restated from time to time.

“Security Instrument” means the Multifamily Open-End Mortgage, Assignment of Rents and Security Agreement, together with all riders thereto, securing the Project Note, to be executed by the Borrower with respect to the Project, as it may be amended, modified, supplemented or restated from time to time.

“Servicer” means Wells Fargo Bank National Association, or any successor Servicer selected by Freddie Mac.

2. Applicability. The provisions of this Rider shall amend and supplement the provisions of, and in the event of a conflict shall supersede the conflicting provisions of, the Regulatory Agreement.

3. Indemnification. Inasmuch as the covenants, reservations and restrictions of the Regulatory Agreement run with the land, the indemnification obligations of the Borrower contained in the Regulatory Agreement will be deemed applicable to any successor in interest to the Borrower, but, it is acknowledged and agreed, notwithstanding any other provision of the Regulatory Agreement to the contrary, that neither the Funding Lender nor any successor in interest to the Funding Lender will assume or take subject to any liability for the indemnification obligations of the Borrower for acts or omissions of the Borrower prior to any transfer of title to Freddie Mac, whether by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan. The Borrower shall remain liable under the indemnification provisions for its acts and omissions prior to any transfer of title to the Funding Lender. The Funding Lender shall indemnify the Governmental Lender following acquisition of the Project by the Funding Lender, by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan, during, and only during, any ensuing period that the Funding Lender owns and operates the Project, provided that the Funding Lender’s liability shall be strictly limited to acts and omissions of the Funding Lender occurring during the period of ownership and operation of the Project by the Funding Lender. The Funding Lender shall have no indemnification obligations with respect to the Governmental Note or the Project Loan Documents. The Borrower shall remain liable under the Regulatory Agreement for its actions and omissions prior to any transfer of title to the Funding Lender.

4. Sale or Transfer. Restrictions on sale or transfer of the Project or of any interest in the Borrower, Governmental Lender and/or Fiscal Agent consents, transferee agreements, transferee criteria and requirements, opinion requirements, assumption fees, transfer fees, penalties and the like shall not apply to any transfer of title to the Project to the Funding Lender or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan. No transfer of the Project shall operate to release the Borrower from its

obligations under the Regulatory Agreement. Nothing contained in the Regulatory Agreement shall affect any provision of the Security Instrument or any of the other Project Loan Documents that requires the Borrower to obtain the consent of the Funding Lender as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Project or of any direct or indirect interest in the Borrower, excluding transfers permitted by the Security Instrument. No covenant obligating the Borrower to obtain an agreement from any transferee to abide by all requirements and restrictions of the Regulatory Agreement shall have any applicability to a transfer to the Funding Lender upon foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan by the Funding Lender, or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan.

5. Enforcement. Notwithstanding anything contained in the Regulatory Agreement to the contrary: (i) the occurrence of an event of default under the Regulatory Agreement shall not, under any circumstances whatsoever, be deemed or constitute a default under the Project Loan Documents, except as may be otherwise specified in the Project Loan Documents; and (ii) the occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument. No person other than the Funding Lender shall have the right to (a) declare the principal balance of the Project Note to be immediately due and payable or (b) commence foreclosure or other like action with respect to the Security Instrument. The Governmental Lender and the Fiscal Agent acknowledge and agree that the exercise of any rights and remedies under the Regulatory Agreement is subject to the provisions of the Project Loan Documents.

6. Notice of Violations. Promptly upon determining that a violation of the Regulatory Agreement has occurred, the Governmental Lender or the Fiscal Agent shall, by notice in writing to the Borrower, the Servicer and the Funding Lender, inform the Borrower, the Servicer and the Funding Lender that such violation has occurred, the nature of the violation and that the violation has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such violation, neither the Governmental Lender nor the Fiscal Agent shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Project Loan, to enforce the Project Note or to foreclose on the Security Instrument.

7. Amendments. The Regulatory Agreement shall not be amended without the prior written consent of the Funding Lender.

8. Fees; Penalties. The Funding Lender shall not be liable for the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by the Borrower or any subsequent owner of the Project prior to the date of acquisition of the Project by the Funding Lender, whether such acquisition is by foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan.

9. Subordination. The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 2, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Project Loan Documents.

10. Third-Party Beneficiary. The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of the Funding Lender and are entered into for the benefit of various parties, including the Funding Lender. The Funding Lender shall accordingly have contractual rights in the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Governmental Lender and/or the Fiscal Agent, or to cause the Governmental Lender or the Fiscal Agent to enforce, the terms of the Regulatory Agreement. In addition, the Funding Lender is intended to be and shall be a third-party beneficiary of the Regulatory Agreement.

11. Notices. Copies of all notices under the Regulatory Agreement shall be sent to the Servicer at the address set forth below or to such other address as the Servicer may from time to time designate:

Wells Fargo Bank, National Association
2010 Corporate Ridge, Suite 1000
McLean, VA 22102
Attention: Servicing Department

Any notice to be given to Freddie Mac shall be sent to Freddie Mac at the address set forth below or to such other address as Freddie Mac may from time to time designate:

Federal Home Loan Mortgage Corporation
8100 Jones Branch Drive, MS B4P
McLean, Virginia 22102
Attention: Multifamily Operations - Loan Accounting
Email: mfla@freddiemac.com
Telephone: (703) 714-4177

with a copy to:

Federal Home Loan Mortgage Corporation
8200 Jones Branch Drive, MS 210
McLean, Virginia 22102
Attention: Managing Associate General Counsel
Multifamily Legal Division
Email: joshua_schonfeld@freddiemac.com
Telephone: (703) 903-2000

Received for Record at Groton, CT
On 05/31/2017 At 1:50:28 pm

Attest: Betsy Moukawsher, Town Clerk