

D.N.: HHB-CV16-6034701-S	:	SUPERIOR COURT
	:	
ODD FELLOWS HOME OF	:	
CONNECTICUT, INC. D/B/A FAIRVIEW	:	J.D. OF NEW BRITAIN
	:	
VS.	:	AT NEW BRITAIN
	:	
TOWN OF GROTON, WEST PLEASANT	:	
VALLEY FIRE DISTRICT, AND GROTON	:	
SEWER DISTRICT	:	NOVEMBER 20, 2017

**MOTION BY STIPULATION FOR ORDER**  
**IN ACCORDANCE WITH AGREEMENT**

In the above-captioned action, Plaintiff respectfully moves that, by agreement of the parties, the following Order enter in accordance with the Memorandum of Agreement, dated November 20, 2017, the original of which is appended hereto.

PLAINTIFF  
ODD FELLOWS HOME OF  
CONNECTICUT, INC. D/B/A FAIRVIEW

By: 

Elliot G. Kaiman, Esq.  
Wiggin and Dana LLP  
265 Church Street  
New Haven, CT 06510  
Juris No.: 67700  
Telephone: (203) 498-4309  
Its Attorneys

**ORAL ARGUMENT NOT REQUESTED**  
**TESTIMONY NOT REQUIRED**

**CERTIFICATION**

I hereby certify that a copy of the foregoing, along with the attached proposed Order and executed Memorandum of Agreement, was mailed, via U.S. regular mail, postage prepaid and via electronic mail on this 20<sup>th</sup> day of November, 2017 to:

Eric W. Callahan  
Suisman Shapiro Wool Brennan Gray & Greenberg, PC  
The Courtney Building, Suite 200  
2 Union Plaza  
Post Office Box 1591  
New London, CT 06320



Elliot G. Kaiman

**ORDER**

Judgment shall enter in accordance with the following Memorandum of Agreement.

Date: \_\_\_\_\_  
Judge of the Superior Court

<b>D.N.: HHB-CV16-6034701-S</b>	:	<b>SUPERIOR COURT</b>
	:	
<b>ODD FELLOWS HOME OF</b>	:	
<b>CONNECTICUT, INC. D/B/A FAIRVIEW</b>	:	<b>J.D. OF NEW BRITAIN</b>
	:	
<b>VS.</b>	:	<b>AT NEW BRITAIN</b>
	:	
<b>TOWN OF GROTON, WEST PLEASANT</b>	:	
<b>VALLEY FIRE DISTRICT, AND GROTON</b>	:	
<b>SEWER DISTRICT</b>	:	<b>NOVEMBER 20, 2017</b>

**MEMORANDUM OF AGREEMENT**

It is herewith agreed, by and between all of the above-captioned parties, as follows.

**Section I – Real Property Valuation**

1. Odd Fellows Home of Connecticut, Inc. (“Plaintiff”) is a non-stock corporation organized and existing under the laws of the State of Connecticut with a mailing address at 235 Lestertown Road, Groton, Connecticut 06340.

2. On April 18, 1978, the Internal Revenue Service determined that Plaintiff is exempt from federal income taxation as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1986 (as amended from time-to-time, the “IRC”). Plaintiff represents and warrants to Defendants that Plaintiff has received no notice from the Internal Revenue Service revoking such 501(c)(3) determination. Defendants acknowledge and agree that the determination whether an organization is exempt from federal income taxation under said Section 501(c)(3) of the IRC is exclusively within the jurisdiction of the Internal Revenue Service and those federal courts with jurisdiction over the Internal Revenue Service’s income tax

exemption determinations. Furthermore, Defendants covenant and agree that they shall not challenge or question Plaintiff's exemption from federal income taxation as an organization described in Section 501(c)(3) of the IRC during the PILOT Term (as defined below), provided, however, nothing herein shall be construed to prevent the Defendants, during the PILOT Term, from requesting a written statement from Plaintiff confirming that Plaintiff's exemption from federal income taxation as an organization described in Section 501(c)(3) of the IRC has not been revoked. In addition, in the event Plaintiff's exemption from federal income taxation as an organization described in Section 501(c)(3) of the IRC is revoked during the PILOT Term, Plaintiff shall promptly notify Defendants in writing of such revocation.

3. Plaintiff was on October 1, 2015 and all relevant times the owner of certain real property, consisting of a parcel of land with improvements thereon located at 235 Lestertown Road, Groton, Connecticut (PIN# 168906288556; a/k/a 231 Lestertown Road, Groton, Connecticut) (the "Real Property"), all as set forth in the records of the Assessor of the Town of Groton (the "Assessor").

4. The Town of Groton's (the "Town") and the West Pleasant Valley Fire District's and the Groton Sewer District's (together, the "Districts" and, collectively with the Town, the "Defendants") fair market valuation (100%) and assessment (70%) of the Real Property, on a gross basis, as of October 1, 2015, was:

	<b>Full Market Value (100%)</b>	<b>Assessed Value (70%)</b>
Land	\$2,998,100.00	\$2,098,670.00
Improvements	\$21,230,720.00	\$14,861,504.00
Total	\$24,228,820.00	\$16,960,174.00

5. Plaintiff timely filed an appeal from the Grand List of October 1, 2015. During the pendency of the above-captioned case, Defendants assigned the following fair market valuation (100%) and assessment (70%) to the Real Property, on a gross basis, as of October 1, 2016:

	<b>Full Market Value (100%)</b>	<b>Assessed Value (70%)</b>
Land	\$4,232,100.00	\$2,962,470.00
Improvements	\$21,585,400.00	\$15,109,780.00
Total	\$25,817,500.00	\$18,072,250.00

6. Subject to the terms and conditions of Section III – Exemption and PILOT, the fair market valuation (100%) and assessment (70%) of the Real Property, on a gross basis as of October 1, 2015, shall remain and is:

	<b>Full Market Value (100%)</b>	<b>Assessed Value (70%)</b>
Land	\$2,998,100.00	\$2,098,670.00
Improvements	\$21,230,720.00	\$14,861,504.00
Total	\$24,228,820.00	\$16,960,174.00

7. Subject to the terms and conditions of Section III – Exemption and PILOT, the fair market valuation (100%) and assessment (70%) of the Real Property, on a gross basis as of October 1, 2016, should be and is:

	<b>Full Market Value (100%)</b>	<b>Assessed Value (70%)</b>
Land	\$2,998,100.00	\$2,098,670.00
Improvements	\$21,799,949.73	\$15,259,964.81
Total	\$24,798,049.73	\$17,358,634.81

**Section II – Personal Property Valuation**

1. Plaintiff was on October 1, 2015 and all relevant times the owner of certain personal property known in the records of the Town as Personal Property Unique ID # 299105 (the “Personal Property”), and located upon the Real Property, all as set forth in the records of the Assessor.

2. Although not required by law with respect to personal property exempt from taxation, a written or printed list of the Personal Property with respect to the October 1, 2015 Grand List was duly brought in to the Assessor on or before the date when the same would have been due but for the Personal Property being exempt from municipal property taxation.

3. The Personal Property was valued and assessed, on a gross basis as of October 1, 2015, by Defendants as follows:

<b>Full Market Value (100%)</b>	<b>Assessed Value (70%)</b>
\$1,995,171.43	\$1,396,620.00

4. Plaintiff timely filed an appeal from the Grand List of October 1, 2015. During the pendency of the above-captioned case, Defendants assigned the following fair market valuation (100%) and assessment (70%) to the Personal Property, on a gross basis, as of October 1, 2016:

<b>Full Market Value (100%)</b>	<b>Assessed Value (70%)</b>
\$2,493,971.43	\$1,745,780.00

5. Subject to the terms and conditions of Section III – Exemption and PILOT, the fair market valuation (100%) and assessment (70%) of the Personal Property, on a gross basis as of October 1, 2015, should be and is:

<b>Full Market Value (100%)</b>	<b>Assessed Value (70%)</b>
\$1,939,615.43	\$1,357,731.00

6. Although not required by law with respect to personal property exempt from taxation, a written or printed list of the SNF Personal Property (as defined in Section III, Paragraph 5 below) and the Personal Property which is not SNF Personal Property, in each case, with respect to the October 1, 2016 Grand List has been timely provided to the Assessor. The written or printed list of the SNF Personal Property with respect to the 2016 Grand List is sometimes referred to herein as the “SNF 2016 Personal Property Declaration.”

7. Subject to the terms and conditions of Section III – Exemption and PILOT, the fair market valuation (100%) and assessment (70%) of the Personal Property, on a gross basis as of October 1, 2016, should be and is:

<b>Full Market Value (100%)</b>	<b>Assessed Value (70%)</b>
\$2,287,456.00	\$1,601,219.20

8. Notwithstanding that Plaintiff is not required by law to file a personal property declaration with respect to the portion of its Personal Property which is tax exempt, Plaintiff will provide the Town with two (2) personal property declarations for each of the October 1, 2017 through October 1, 2025 Grand Lists, inclusive, by November 1 of the then applicable year (*e.g.*, the declaration of personal property owned or leased by Plaintiff as of October 1, 2017 should be



filed with the Assessor by November 1, 2017) to declare all of Plaintiff's owned and leased personal property located at the Real Property. One such declaration shall declare Plaintiff's owned and leased personal property located at or used in connection with the SNF Real Property (as defined in Paragraph 1 of Section III – Exemption and PILOT), and the other declaration to declare all other personal property owned and leased by Plaintiff located at and used in connection with the remaining portion of Real Property (*i.e.*, other than the SNF Real Property), provided, however, the Defendants acknowledge and agree that the filing of a personal property tax declaration with respect to exempt Personal Property is undertaken by Plaintiff solely as a courtesy to Defendants in connection with the Assessor's determination of valuation and assessment set forth in this Memorandum of Agreement (this "Agreement") and in no event shall the statutory penalty set forth in Connecticut General Statutes ("Conn. Gen. Stat.") § 12-53 (or any similar penalty or increased assessment) apply on account of or in connection with Plaintiff's failure to file a personal property tax declaration with respect to Personal Property which is exempt from taxation pursuant to applicable law. Nothing in this Agreement shall relieve any person, entity or organization owning or leasing personal property at the Real Property from the obligation to file a personal property declaration with the Assessor in connection with any personal property which is not exempt from municipal property taxation pursuant to applicable law.

### **Section III – Exemption and PILOT**

1. As of October 1, 2015 and October 1, 2016, and all relevant times, Plaintiff operated a chronic and convalescent nursing home and/or skilled nursing facility (the "Facility")

on and comprising a portion of the Real Property (such portion, the “SNF Real Property”). The SNF Real Property is exempt from property taxes pursuant to Conn. Gen. Stat. § 12-81(75) (the “SNF Real Property Exemption”) because: (i) Plaintiff is a non-profit organization under Section 501(c)(3) of the IRC; (ii) the Facility located on and comprising the SNF Real Property is licensed by the State of Connecticut and described in Conn. Gen. Stat. § 19a-490(c); (iii) the SNF Real Property was not on the Town’s net taxable Grand List of October 1, 1999; and (iv) the SNF Real Property was not the subject of any time-limited written agreement in existence on June 1, 2000, with the Town regarding the taxability of the SNF Real Property.

2. Plaintiff properly claimed exemption of the SNF Real Property under Conn. Gen. Stat. § 12-81(75).

3. Plaintiff and Defendants agree that, as to the October 1, 2015 and October 1, 2016 Grand Lists, the gross valuation and assessment of the SNF Real Property should be and is:

<b>Full Market Value (100%)</b>	<b>Assessed Value (70%)</b>
\$7,450,000.00	\$5,215,000.00

4. The Personal Property, as of October 1, 2015, was exempt from property taxes pursuant to Conn. Gen. Stat. § 12-81(75) because: (i) Plaintiff is a non-profit organization under Section 501(c)(3) of the IRC; (ii) the Personal Property was located at the Facility; (iii) the Personal Property was not on the Town’s net taxable Grand List of October 1, 1999; and (iv) the Personal Property was not the subject of any time-limited written in agreement in existence on June 1, 2000, with the Town regarding the taxability of the Personal Property.

5. A portion of the Personal Property (the “SNF Personal Property”), as of October 1, 2016, was exempt from property taxes pursuant to Conn. Gen. Stat. § 12-81(75) (the “SNF Personal Property Tax Exemption” and, together with the SNF Real Property Exemption, the “SNF Exemption”) because: (i) Plaintiff is a non-profit organization under Section 501(c)(3) of the IRC; (ii) the SNF Personal Property was located at the Facility; (iii) the SNF Personal Property was not on the Town’s net taxable Grand List of October 1, 1999; and (iv) the SNF Personal Property was not the subject of any time-limited written in agreement in existence on June 1, 2000, with the Town regarding the taxability of the SNF Personal Property. The portion of the Personal Property which constitutes the SNF Personal Property is more particularly set forth in the SNF 2016 Personal Property Declaration.

6. Plaintiff properly claimed exemption of the SNF Personal Property under Conn. Gen. Stat. § 12-81(75).

7. Plaintiff and Defendants agree that, as to the October 1, 2015 and October 1, 2016 Grand Lists, the gross valuation and assessment of the SNF Personal Property should be and is:

<b>2015 Full Market Value (100%)</b>	<b>2015 Assessed Value (70%)</b>
\$1,939,615.43	\$1,357,731.00
<b>2016 Full Market Value (100%)</b>	<b>2016 Assessed Value (70%)</b>
\$1,987,872.00	\$1,391,510.40

8. Commencing on the October 1, 2015 Grand List and continuing on all subsequent Grand Lists, the SNF Exemption shall be and remain in effect unless and until: (i) Plaintiff or any

subsequent owner of the SNF Real Property and/or SNF Personal Property fails to be a nonprofit organization for purposes of Section 501(c)(3) of the IRC of 1986, or any subsequent corresponding IRC of the United States, as from time to time amended; (ii) the Facility ceases to be licensed by the State of Connecticut pursuant to Conn. Gen. Stat. Chapter 368v or described in subsection (c) of Conn. Gen. Stat. § 19a-490, or any corresponding statutory provisions, as amended from time to time; or (iii) if applicable, Plaintiff fails to satisfy any other requirement of Conn. Gen. Stat. § 12-81(75), as amended from time to time, which may hereafter be imposed by law.

9. Plaintiff's Real Property and Personal Property (together, the "Property") which is otherwise taxable is exempt from taxation pursuant and subject to Section 3 of Number 119 of the Special Acts of 1893, as amended from time to time, including as most recently amended by Special Act No. 17-7 (An Act Amending the Charter of the Odd Fellows Home of Connecticut) (collectively the "Legislative Exemption"), up to Twenty-Five Million and 00/100 Dollars (\$25,000,000) in fair market value. In other words, the Legislative Exemption exempts from municipal property taxation the first \$25,000,000 (fair market value) of Plaintiff's otherwise taxable Property (*i.e.*, property which is exempt from municipal property taxation pursuant to any exemption other than the Legislative Exemption is not included in the calculation of fair market value for the purposes of the Legislative Exemption). Neither Plaintiff nor Defendants shall support any modifications or changes to the Legislative Exemption during the PILOT Term set forth in this Agreement. Further, in the event of a material and substantive change in facts or laws (as distinct from revised or new interpretations of existing facts or laws) which (i) occurs after the

date of this Agreement and (ii) affects the applicability of the Legislative Exemption, Defendants and Plaintiff reserve all rights with respect to asserting and challenging the applicability of the Legislative Exemption, including but not limited to Plaintiff's rights of appeal pursuant to applicable law.

10. Notwithstanding the terms and conditions of the Legislative Exemption and subject to the terms and conditions of Section IV – Overpayments and Miscellaneous, Plaintiff and Defendants have agreed that, commencing with the October 1, 2015 Grand List and continuing through and including the October 1, 2025 Grand List (*i.e.*, for eleven (11) Grand List years) (the "PILOT Term"), Plaintiff will pay to the Defendants as voluntary payments-in-lieu-of-taxes (collectively, the "PILOT Payments") the annual amount of \$60,000 (in two equal installments of \$30,000), payable in the same manner and at the same time as municipal property taxes are generally due and payable in the Town. The terms and conditions of this Paragraph 10 shall apply during the PILOT Term and shall terminate upon the expiration thereof.

11. Notwithstanding the terms and conditions of the Legislative Exemption and subject to the terms and conditions of Section IV – Overpayments and Miscellaneous, Plaintiff and Defendants agree that, during the PILOT Term, in addition to the PILOT Payments, Plaintiff will pay municipal property taxes based on the generally applicable mill rate (including any generally applicable mill adders on account of the Districts), in the same manner and at the same time as municipal property taxes are generally due and payable in the Town, on the portion of Plaintiff's Property which exceeds \$25,000,000 in fair market value, provided, however, the following terms and conditions shall apply during the PILOT Term: (i) notwithstanding their exempt status, the

calculation of the fair market value of the Plaintiff's Property shall include, as the first Property included in the calculation, the SNF Real Property and the SNF Personal Property; (ii) in each case where the valuation or assessment of Plaintiff's Property (including any New Property (as defined below)) is changed from the valuation and assessment set forth on the October 1, 2016 Grand List, as adjusted in this Agreement, regardless of the reason for or cause of such change, Plaintiff shall have and enjoy the right to challenge such change(s) and each and every of the rights of appeal otherwise applicable under applicable law; and (iii) in the event Plaintiff acquires, places in service, constructs, expands, and/or otherwise improves real or personal property or improvements in the Town (collectively, "New Property"), in each case on or after October 2, 2016, to the extent such New Property is eligible for exemption from municipal property taxation under Conn. Gen. Stat., such New Property shall be so exempted and shall not be included in the calculation of the fair market value of Plaintiff's Property for the purposes of this Paragraph 11, provided, however, (A) nothing herein shall be construed as limiting or waiving any of Defendants' right to confirm or challenge Plaintiff's assertion that New Property is eligible for exemption from municipal property taxation under Conn. Gen. Stat. and (B) to the extent any such New Property is found to be not eligible for exemption from municipal property taxation under Conn. Gen. Stat., such New Property shall be included in the calculation of the fair market value of Plaintiff's Property for the purposes of this Paragraph 11. The terms and conditions of this Paragraph 11 shall apply during the PILOT Term and shall terminate upon the expiration thereof.

**Section IV – Overpayments and Miscellaneous**

1. After taking into account the parties’ agreements set forth in Sections I, II and III of this Agreement, the parties agree that the aggregate sum of \$177,299.43 shall be considered an overpayment for the October 1, 2015 Grand List (the “Overpayment”). The Overpayment is calculated as follows: Plaintiff has, under protest, paid a total of \$258,385.02 in disputed tax payments on account of the October 1, 2015 Grand List. After taking into account: (i) the valuation reduction set forth in Section II - Valuation of Personal Property; and (ii) the parties’ agreement in Paragraphs 10 and 11 of Section III – Exemption and PILOT, the Plaintiff should have paid the aggregate amount of \$81,085.59 on account of the October 1, 2015 Grand List and the 2015 Pilot Payment. Thus,  $\$258,385.02 - \$81,085.59 = \$177,299.43$ . For illustrative purposes, the \$81,085.59 October 1, 2015 Grand List year liability referenced in clause (ii) of this Paragraph 1 is calculated as follows:

- A. 2015 Grand List year 100% fair market value of the Property: \$26,168,435.43; less
- B. 2015 Grand List year Legislative Exemption: \$25,000,000.00; equals
- C. 2015 Grand List year 100% fair market value of the Property in excess of the Legislative Exemption: \$1,168,435.43;
- D.  $\$1,168,435.43 \times 70\% =$  \$817,904.80;
- E.  $\$817,904.80 \times 25.78 \text{ mills } (.02578) =$  \$21,085.59; plus
- F. 2015 Pilot Payment of \$60,000 = \$81,085.59

2. The Overpayment shall be refunded to Plaintiff as a credit against property taxes and the PILOT Payments otherwise first due and owing to Defendants in connection with the

October 1, 2016 Grand List and October 1, 2017 Grand Lists and, if necessary to fully exhaust the Overpayment credit, future Grand Lists.

3. Commencing on the October 1, 2016 Grand List and continuing on all subsequent Grand Lists, the valuation and assessment set forth in Paragraph 7 of Section I - Valuation of Real Property shall be and remain in effect, and Defendants shall not otherwise revalue the Real Property, unless and until: (i) the next Town-wide real property revaluation or (ii) demolition, destruction, or new construction with respect to the Real Property which permits a change in valuation pursuant to applicable law and the terms and conditions of this Agreement. Plaintiff reserves the right to challenge any change(s) in valuation and assessment (including without limitation with respect to the valuation and assessment of any of the SNF Personal Property and/or the SNF Real Property) and each and every of the rights of appeal otherwise applicable under applicable law.

4. Commencing on the October 1, 2017 Grand List and continuing on all subsequent Grand Lists, the Assessor shall value and assess the Personal Property, including but not limited to the SNF Personal Property and/or any New Property constituting personal property, in accordance with applicable law and the other terms of this Agreement, and Plaintiff reserves the right to challenge any change(s) in valuation and assessment and each and every of the rights of appeal otherwise applicable under applicable law.

5. At the end of the PILOT Term, the parties agree to discuss in good faith entering into an agreement which would supersede the terms of this Agreement, provided, however, such good faith discussion shall be based on the then current facts, circumstances and laws and nothing



herein shall be construed as obligating either party to enter into any further agreement or undertaking in connection with the subject matter hereof.

6. Each party is to bear its own fees, costs, and expenses.

7. No interest shall be assessed against Defendants with respect to the Overpayment by Plaintiff.

8. Simultaneous with the execution of this Agreement the Defendants shall cause any and all liens, notices of lien(s) and certificates of lien(s) to be released and discharged in all respects (other than inchoate liens with respect to amounts not yet due and payable, if any).

9. This Agreement sets forth the entire understanding and agreement of the parties with respect to the subject matter hereof, is binding upon them and supersedes any and all other understandings, negotiations or agreements as between them regarding this litigation.

*[Remainder of page intentionally left blank; signature page to Memorandum of Agreement follows.]*



\_\_\_\_\_  
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Juris No. 67700  
Attorneys for Plaintiff  
Hereunto Duly Authorized

ODD FELLOWS HOME OF  
CONNECTICUT, INC.

By: \_\_\_\_\_  
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Hereunto Duly Authorized

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Juris No. 423276  
Attorneys for Defendants  
Hereunto Duly Authorized

TOWN OF GROTON AND  
GROTON SEWER DISTRICT

By: \_\_\_\_\_  
John Burt, Town Manager  
45 Fort Hill Road  
Groton, CT 06340-4360  
Telephone (860) 441-6630  
Hereunto Duly Authorized


WEST PLEASANT VALLEY  
FIRE DISTRICT

By: \_\_\_\_\_  
Donald Gordon, President  
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Hereunto Duly Authorized

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WEST PLEASANT VALLEY  
FIRE DISTRICT

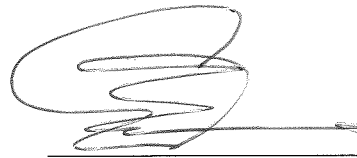
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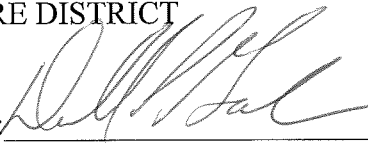
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