

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Citibank, N.A.  
Transaction Management Group/ Post Closing  
390 Greenwich Street, 2<sup>nd</sup> Floor  
New York, New York 10013  
Attn: Tanya Jimenez

Citi Deal ID# 23171



201510080100

Skagit County Auditor

\$82.00

10/8/2015 Page

1 of

11

3:38PM

**CHICAGO TITLE**  
**620019855**

**REGULATORY AND USE AGREEMENT**  
(Ruby Portfolio – Fairhaven Manor)

Grantor: BOH PORTFOLIO PRESERVATION ASSOCIATES, LLLP

Grantee: CITIBANK, N.A.

Legal Description

Abbreviated form: Fairhaven Manor: Lot(s): PTN TRACT 43 BURLINGTON ACREAGE, Skagit County

Additional legal on page A-1 of document

Assessor's Property Tax Parcel Account Number(s): P62559/3867-000-043-0708 and P95540/3867-000-043-2308

Reference number(s) of documents being assigned or released and related documents: \_\_\_\_\_

**REGULATORY AND USE AGREEMENT**

**BETWEEN**

**BOH PORTFOLIO PRESERVATION ASSOCIATES, LLLP**

**AND**

**CITIBANK, N.A.**

**Dated: October 8, 2015**

Development Name: Fairhaven Manor

Development Location: 115 Hulbush Lane, Burlington, Washington 98233

## REGULATORY AND USE AGREEMENT

(Ruby Portfolio – Fairhaven Manor)

This Regulatory and Use Agreement (“**Agreement**”) is made by and between **BOH PORTFOLIO PRESERVATION ASSOCIATES, LLLP**, a Washington limited liability limited partnership (“**Owner**”), the Owner of the fee interest in that certain real property located in the City of Burlington, Skagit County, State of Washington, more particularly described on “**Exhibit A**” (“**Real Estate**”), and **CITIBANK, N.A.**, a national banking association (“**Citi**” and collectively with the Owner, the “**Parties**”).

### I. RECITALS

- A. Substantially concurrently herewith, Owner and Citi have entered into that certain Subordinate Loan Agreement of even date herewith (“**Subordinate Citi Loan Agreement**”) pursuant to which Owner is borrowing from Citi and Citi is making a loan to Owner in the maximum principal amount of \$1,500,000 secured by a subordinate lien on the Property (the “**Subordinate Citi Loan**”).
- B. The Real Estate currently includes, or upon completion of construction will include, the following unit mix:
  - 0 studio apartments
  - 8 one bedroom apartments
  - 24 two bedroom apartments
  - 8 three bedroom apartments
  - 0 four bedroom apartments16 units at the Real Estate are leased, or upon completion of construction will be leased, to Qualifying Tenants.
- C. Citi would not have executed such Subordinate Citi Loan Agreement or made the Subordinate Citi Loan to Owner without Owner’s execution of this Agreement.

### II. COVENANTS AND OBLIGATIONS

The parties agree that the closing and funding of the Subordinate Citi Loan to Owner constitutes adequate consideration for the obligations undertaken by Owner in this Agreement. As of the date hereof, Owner hereby imposes the following use restrictions upon the Real Estate. In consideration of these mutual undertakings and covenants, the parties further agree as follows:

- A. As a condition precedent to the funding of the Subordinate Citi Loan to Owner, Owner shall record this Agreement and its attachments with the office of the recorder for Skagit County, Washington, in which the Real Estate is located, to create a restrictive covenant running with the land upon which the Real Estate is situated. Owner agrees that all requirements under applicable law that must be satisfied so that the provisions of this Agreement constitute valid and binding deed restrictions and covenants running with the Real Estate. Throughout the term of this Agreement, the covenants and restrictions shall survive

and be effective regardless of whether any contract, deed or other instrument subsequently executed conveying all or part of the Real Estate provides that such conveyance is subject to this Agreement.

- B. Owner shall comply with the following occupancy restrictions with respect to the improvements currently existing or to be constructed or rehabilitated on the Real Estate (the "Project"):
1. Owner shall either (i) lease not less than 20% of the units in the Project to individuals or families whose income is 50% or less of area median gross income ("50% Tenants") (including adjustments for family size) announced from time to time by the United States Department of Housing and Urban Development, ("AMI") or (ii) lease not less than 40% of the units in the Project to individuals or families whose income is 60% or less of AMI ("60% Tenants" and together with the 50% Tenants, "Qualifying Tenants").
  2. The rent charged to all Qualifying Tenants at the Project shall not exceed 30% of the AMI limit for the unit occupied by such Qualifying Tenant.
  3. Owner shall not refuse to lease to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.
  4. It is the intention of the Parties hereto that the use and rent restrictions and income and rent calculations set forth in this paragraph be interpreted to be consistent with the restrictions, limitations and calculations applied from time to time under Section 42 of the Internal Revenue Code of 1986, as amended and the interpretations thereof by the Internal Revenue Service.
- C. Owner agrees that for the term of this Agreement Owner shall agree to accept Housing Choice Vouchers if and to the extent offered to the Project by HUD and shall execute all use agreements required by HUD to encumber the Real Estate in connection therewith.
- D. Owner shall during the term of this Agreement comply in all material respects with the affirmative marketing standards set forth in 24 CFR Part 200.620. There shall be no restriction on residency based on age.
- E. Citi and Qualifying Tenant(s) (or either or all of them) are entitled, for any breach of this Agreement, to enforce specific performance by Owner of its obligations under this Agreement in a state court of competent jurisdiction, in addition to all other remedies provided by law or in equity. Owner unconditionally agrees that the beneficiaries of Owner's obligations under this Agreement cannot adequately be compensated by monetary damages in the event of any such breach.
- F. Owner shall indemnify, save and hold harmless Citi, its directors, officers, employees and agents from any and all claims, losses, damages or expenses (including reasonable attorneys' fees) arising out of or in any way related to failure or alleged failure of the Owner to strictly and timely perform its obligations under this Agreement.
- G. An Event of Default shall be deemed to have occurred hereunder if Owner shall be in breach of any its obligations under this Agreement and such breach is not be cured within thirty (30) days following the date written notice of such breach is delivered by Citi to Owner in accordance with Section III.E. hereof; provided, however, such thirty (30) day cure period may be extended by Citi if Owner, during such thirty (30) day period, has commenced prosecuting a cure of such breach and thereafter continues to prosecute such cure to completion. Upon the occurrence of an Event of Default hereunder, Citi shall have all remedies afforded Citi under applicable law on account of such Event of Default including, without limitation, injunctive relief.

### III. TERM, TERMINATION, MISCELLANEOUS

- A. The terms, conditions, covenants and restrictions of this Agreement commence upon the first disbursement of proceeds of the Subordinate Citi Loan and end on the date which is thirty (30) years from such date.
- B. This Agreement may be foreclosed upon and the restrictive covenants contained herein shall terminate on the date the Project is acquired by foreclosure in accordance with applicable law, or by instrument in lieu of foreclosure, provided that Citi has received notice of such transaction. The foregoing termination shall not be effective if the Internal Revenue Service or, if the Project has qualified for low income housing tax credits, the state authority allocating or monitoring compliance with such tax credit regulations, determines any such acquisition of the Project is part of an arrangement with the Owner, or its successors or assigns, a purpose of which is to terminate the affordability restriction contained in the extended use agreement executed in connection with such tax credits.
- C. This Agreement shall be binding upon the Project and shall constitute covenants running with the land. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.
- D. This Agreement may be amended only with the prior written approval of the Parties hereto and no amendment shall be effective without such prior written approval. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof. All notices to be given pursuant to this Agreement shall be in writing and given in accordance with Section III.E. hereof.
- E. Notices shall be given to the parties in accordance with and to the addresses set forth in the Subordinate Citi Loan Agreement.
- F. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF OWNER AND CITI (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.
- G. This Agreement shall be governed by the laws of the State of Washington.

[THE REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Owner and Citi have caused this Agreement to be signed by duly authorized representatives, on the day and year first written above.

OWNER:

**BOH PORTFOLIO PRESERVATION ASSOCIATES, LLLP,**  
a Washington limited liability limited partnership

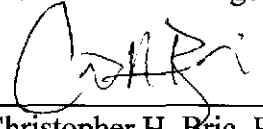
By: BOH Portfolio Preservation JV Associates, LLC,  
a Washington limited liability company,  
its Administrative General Partner

By: Shelter Resources, Inc.,  
a Washington corporation,  
its Manager

By:   
Len Brannen, President

By: Shelter America Group-Ruby LLC,  
a Washington limited liability company,  
its Managing General Partner

By: Shelter America Group,  
a Washington nonprofit corporation,  
its Sole Member and Manager

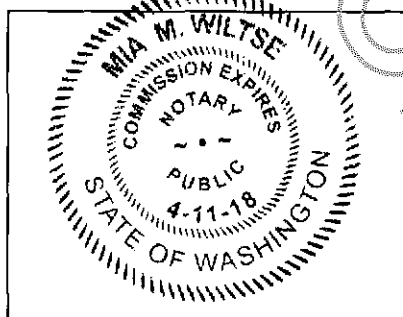
By:   
Christopher H. Bric, President

Address: c/o BOH Portfolio Preservation JV Associates, LLC  
2223 112th Ave. NE, Suite 102  
Bellevue, Washington 98004  
Attention: Len Brannen, President

STATE OF WASHINGTON     )  
                                              ) ss.  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that Len Brannen is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of Shelter Resources, Inc., a Washington corporation, the Manager of BOH Portfolio Preservation JV Associates, LLC, a Washington limited liability company, the Administrative General Partner of BOH Portfolio Preservation Associates, LLLP, a Washington limited liability limited partnership, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: October 1, 2015



(Use this space for notarial stamp/seal)

Mia M. Wiltse  
Notary Public

Print Name Mia M. Wiltse

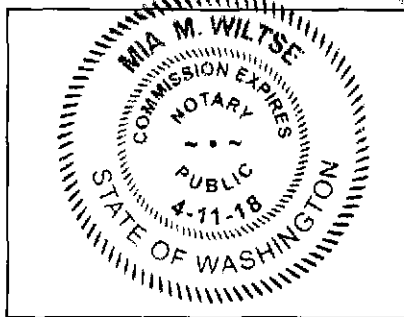
My commission expires 4-11-18

(Seal)

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Christopher H. Bric is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of Shelter America Group, a Washington nonprofit corporation, the Sole Member and Manager of Shelter America Group-Ruby LLC, a Washington limited liability company, the Managing General Partner of BOH Portfolio Preservation Associates, LLLP, a Washington limited liability limited partnership, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: October 1, 2015



(Use this space for notarial stamp/seal)

Mia M. Wiltse  
Notary Public

Print Name Mia M. Wiltse

My commission expires 4-11-18

(Seal)



CITI:

CITIBANK, N.A.,

a national banking association

By:

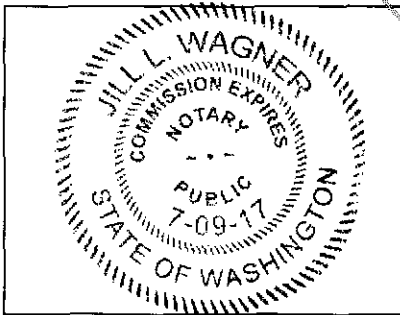
  
Gregory S. Goldberg, Authorized Signatory

**GENERAL ACKNOWLEDGMENT**

STATE OF WASHINGTON    )  
                                          ) ss.  
COUNTY OF KING        )

I certify that I know or have satisfactory evidence that Gregory S. Goldberg is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as an Authorized Signatory of Citibank, N.A. a national banking association, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: October 1, 2015



(Use this space for notarial stamp/seal)

*Jill L. Wagner*  
\_\_\_\_\_  
Notary Public

Print Name

*Jill L. Wagner*  
\_\_\_\_\_

My commission expires

*7-09-17*  
\_\_\_\_\_

EXHIBIT A  
LEGAL DESCRIPTION

**FAIRHAVEN MANOR:**

THE WEST HALF OF THE NORTH HALF OF THE EAST HALF OF TRACT 43, PLAT OF THE BURLINGTON ACREAGE PROPERTY, AS PER PLAT RECORDED IN VOLUME 1 OF PLATS, PAGE 49, RECORDS OF SKAGIT COUNTY, WASHINGTON;

EXCEPT THE TWO FOLLOWING DESCRIBED TRACTS:

1. BEGINNING AT THE SOUTHWEST CORNER OF THE EAST HALF OF THE NORTH HALF OF SAID TRACT 43;

THENCE NORTH ALONG THE WEST LINE OF SAID EAST HALF OF THE NORTH HALF 18.4 FEET; THENCE EAST, 311.5 FEET; THENCE SOUTH 19.3 FEET TO THE SOUTH LINE OF SAID EAST HALF OF THE NORTH HALF; THENCE WEST ALONG THE SOUTH LINE OF SAID EAST HALF OF THE NORTH HALF, 311.5 FEET TO THE POINT OF BEGINNING.

2. THE EASTERLY 25 FEET THEREOF AS CONVEYED TO THE CITY OF BURLINGTON FOR ROAD PURPOSES BY DEEDS RECORDED DECEMBER 28, 1955 AND SEPTEMBER 13, 1977, UNDER AUDITOR'S FILE NOS. 529242 AND 864623, RECORDS OF SKAGIT COUNTY, WASHINGTON, RESPECTIVELY.

FURTHER DESCRIBED AS: COMMENCING AT AN ENCASED MONUMENT AT THE INTERSECTION OF W FAIRHAVEN AVE. AND S NORRIS ST; THENCE S 88°25'56" E 965.42 FEET TO A ENCASED MONUMENT AT THE INTERSECTION OF W FAIRHAVEN AVE. AND HULBUSH LN, SAID POINT BEING ON THE EXTENSION OF THE EAST LINE OF THE WEST HALF OF THE NORTH HALF OF THE EAST HALF OF LOT 43, PLAT OF THE BURLINGTON ACREAGE PROPERTY, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 49, RECORDS OF SKAGIT COUNTY, WASHINGTON; THENCE ALONG SAID EAST LINE, S 2°14'21" W 321.39 FEET TO A POINT 19.30 FEET NORTH OF THE SOUTHEAST CORNER OF THE WEST HALF OF THE NORTH HALF OF THE EAST HALF OF SAID LOT 43; THENCE N 88°29'27" W 25.00 FEET TO THE WEST LINE OF HULBUSH LN AND THE POINT OF BEGINNING; THENCE CONTINUING N 88°29'27" W 236.57 FEET TO A POINT ON THE WEST LINE OF SAID WEST HALF, SAID POINT BEING 18.40 FEET NORTH OF THE SOUTHWEST CORNER OF SAID WEST HALF OF THE NORTH HALF OF THE EAST HALF OF SAID LOT 43; THENCE N 2°11'34" E 291.70 FEET TO THE NORTHWEST CORNER OF SAID WEST HALF AND THE SOUTH LINE OF W. FAIRHAVEN AVE; THENCE ALONG SAID SOUTH LINE, S 88°25'56" E 286.80 FEET TO THE WEST LINE OF HULBUSH LN; THENCE S 2°14'21" W 291.41 FEET TO THE POINT OF BEGINNING;

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON.